

Panaji, 30th November, 2017 (Agrahayana 9, 1939)

SERIES II No. 35

# OFFICIAL GAZETTE



# GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

**Note:-** There are two Extraordinary issues to the Official Gazette, Series II No. 34 dated 23-11-2017 as follows:—

- (1) Extraordinary dated 24-11-2017 from pages 1853 to 1854 regarding Order from Department of Personnel.
- (2) Extraordinary (No. 2) dated 29-11-2017 from pages 1855 to 1861 regarding Order from Department of Finance.

## GOVERNMENT OF GOA

Department of Agriculture  
Directorate of Agriculture

### Corrigendum

No. 8/15/2017-18/D.Aagri(Part)/193

Read: Order No. 8/15/2017-18/D.Aagri (Part)/97 dated 28-07-2017.

In the above referred order the date of extension "w.e.f. 30-05-2016 to 30-09-2017" of the officer at Sr. No. 1 Shri Vithal Joshi, Asst. Director of Agriculture/Subject Matter Specialist may be read as "w.e.f. 01-05-2016 to 30-09-2017".

By order and in the name of the Governor of Goa.

*Nelson X. Figueiredo*, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 22nd November, 2017.

## Department of Education, Art & Culture

Directorate of Higher Education

### Notification

No. 7/32/91-EDN/MISC/535/2620

In exercise of the powers conferred by Statute 95 A of the Goa University Statutes and in consultation with the Goa University, the Government of Goa is pleased to constitute the College Tribunal, State of Goa with Shri Desmond

D'Costa, Retired Judge, District Judge as Presiding Officer for a period of five years for the whole State of Goa for the purpose of the said Statute.

The Notification shall come into force with effect from the date of its publication in the Official Gazette.

By order and in the name of the Governor of Goa.

*Diwan N. Rane*, Under Secretary (Higher Education).

Porvorim, 23rd November, 2017.

## Department of Forest

### Order

No. 4-2-2001-02/FOR(Part-II)/1447

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/1/5/22(1)/2017/885 dated 28-09-2017, the Government of Goa is pleased to appoint Shri Damodar Prakash Salelkar, to the post of Assistant Conservator of Forests (Group 'B' Gazetted) in the pay scale of Rs. 9,300-34,800+Grade Pay of Rs. 4,600 (pre-revised) in the Forest Department, Panaji-Goa, under the Government of Goa, on temporary basis with effect from the date of his joining.

Shri Damodar Prakash Salelkar has been found medically fit as per the Medical Board fitness Certificate forwarded by the Medical Superintendent, Goa Medical College, Bambolim vide their letter No. 4/105/85-H/GMC/2017/654 dated 10-11-2017.

The verification of character and antecedents of Shri Damodar Prakash Salelkar is not required, since he is working as Range Forest Officer, Forest Department, Panaji under Government of Goa.

Shri Damodar Prakash Salelkar shall be on probation for a period of two years.

Shri Damodar Prakash Salelkar shall report to the office of Pr. Chief Conservator of Forests, Panaji-Goa for further posting.

By order and in the name of the Governor of Goa.

Shaila G. Bhosle, Under Secretary (Forest).  
Porvorim, 21st November, 2017.

## Department of General Administration

### Order

No. 14/8/2001-GAD-III(Part I)/3478

On the recommendation of the Departmental Promotion Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/42(1)/2014/923 dated 25-10-2017, Government is pleased to promote the following Senior Assistants/Stenographer Grade-I to the post of Section Officer (Group 'B' Gazetted) in Secretariat, Porvorim, Goa, on regular basis, in Level 7 of the Pay Matrix as per C.C.S. (Revised Pay) Rules, 2016, with immediate effect:-

Sr. No.	Name of the officer
1.	Kum. Kavita Kamlakar Velip (ST).
2.	Smt. Ana C. Marques Fernandes.
3.	Smt. Lidia Gomes E Vaz.

The above Officers shall be on probation for a period of two years from the date of their joining the post.

The above Officials shall exercise their option for fixation of pay in the promotional grade in terms of F.R. 22(I)(a)(1) within a period of one month. The option once exercised shall be final.

The expenditure towards pay and allowances of Officers at Sr. No. 2 & 3 above shall be debited from the Budget Head from where they are presently drawing their salary and allowances. The expenditure towards pay and allowances of Kum. Kavita Kamlakar Velip, Section Officer shall be debited to the Budget Head "2052-Secretariat General Services, 00—; 090—Secretariat (Non-Plan); 01—Department of Personnel & A. R.; 01—Salaries".

Consequent upon their promotion, they shall continue to work at place where they are presently working until further orders.

By order and in the name of the Governor of Goa.

Varsha S. Naik, Under Secretary (GA).  
Porvorim, 20th November, 2017.

### Order

No. 14/8/2001-GAD-III(Part I)/3479

On the recommendation of the Departmental Promotion Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/42(1)/2014/923 dated 25-10-2017, Government is pleased to promote the following Senior Assistants/Stenographer Grade-I to the post of Section Officer (Group 'B' Gazetted) in Secretariat, Porvorim, Goa, on Officiating Basis, in Level 7 of the Pay Matrix as per C.C.S. (Revised Pay) Rules, 2016, with immediate effect:-

Sr. No.	Name of the officer
1.	Smt. Tirthana R. Verlekar.
2.	Smt. Meena M. Naik.
3.	Smt. Juliet Valdares.
4.	Shri Shripad Chandrakant Barve.
5.	Shri Ligorio Renato Baptista.
6.	Shri Siddesh S. Naik.
7.	Smt. Monica Maria Anes Cardozo.
8.	Smt. Celina Maria Rodrigues.

The Officer at Sr. No. 1 above is promoted on "officiating basis" since the recommendation of one Officer is kept in sealed cover. The Officers at Sr. Nos. 2 to 8 above are promoted on "officiating basis" against the 06 Scheduled Tribe and 01 Scheduled Caste vacancy.

The above Officers shall not confer any right for regular promotion and the services so rendered shall not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

The above Officials shall exercise their option for fixation of pay in the promotional grade in terms of F. R. 22(I) (a) (1) within a period of one month. The option once exercised shall be final.

The expenditure towards pay and allowances of the above Officers shall be debited to the following Budget Heads:-

Sr. No.	Name of the officers	Budget Head
1	2	3
1.	Smt. Tirthana R. Verlekar	2052 —Secretariat General Services
2.	Smt. Meena M. Naik	00 — 090 —Secretariat (Non-Plan) 01 —Department of Personnel & A.R. 01 —Salaries

1	2	3
3. Shri Shripad Chandrakant Barve	2052—	Secretariat General Services
4. Shri Ligorio Renato Baptista	00 — 090—	Secretariat (Non-Plan) 04— Law Department 01 —Salaries.
5. Shri Siddesh S. Naik	2251 —	Secretariat Social Services
6. Smt. Monica Maria Anes Cardozo	00 — 090 —	Secretariat (Non-Plan) 01 —Education Department 01 —Salaries
7. Smt. Celina Maria Rodrigues	3451 —	Secretariat Economic Services 00 — 090 —Secretariat (Non-Plan) 02 —Industries & Labour Department 01 —Salaries

The expenditure towards pay and allowances of Smt. Juliet Valdares, Section Officer shall be debited from the Budget Head from where she is presently drawing her salary and allowances.

Consequent upon their promotion, they shall continue to work at same place where they are presently working until further orders.

By order and in the name of the Governor of Goa.

*Varsha S. Naik*, Under Secretary (GA).

Porvorim, 20th November, 2017.

◆◆◆  
Department of Labour

—  
**Order**

No. 24/6/2013-Lab-ESI/808

Government is pleased to count the past services rendered by Dr. Deepa N. Kerkar, Sr. Gynaecologist & Obstetrician in ESI Hospital, Margao, in the grade

of Junior Gynaecologist under Directorate of Health Services for the period from 24-08-2002 to 30-04-2007, for purpose of pensionary benefits only, subject to the conditions that the terminal benefits, if any, obtained by her should be deposited in Government treasury alongwith interest.

This issues with the concurrence of Finance (Rev. & Cont.) Department vide their U.O. No. 1476016 dated 17-11-2017.

By order and in the name of the Governor of Goa.

*A. S. Mahatme*, Under Secretary (Labour).

Porvorim, 23rd November, 2017.

—————  
**Notification**

No. 28/9/2017-LAB/Part-I/795

The following award passed by the Labour Court-II, at Panaji-Goa on 10-10-2017 in reference No. LC-II/IT/11/2014 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Georgina Saldanha*, Under Secretary (Labour).

Porvorim, 20th November, 2017.

—————  
THE LABOUR COURT-II  
GOVERNMENT OF GOA  
AT PANAJI

(Before **Shri Suresh N. Narulkar**, Hon'ble  
Presiding Officer)

Case No. LC-II/IT/11/2014

Ms. Alita Rebello,  
Navelim, Colmorod,  
Lucky General Store,  
Salcete-Goa.

... Workman/Party I

V/s

M/s. Bohemian Crystal  
Company (India),  
Rich Ville, Shop No. A/GS 3 & 4,  
Colmorod, Navelim Road,  
Salcete-Goa.

... Employer/Party II

Party-I/Workman is represented by Adv. Shri T. Pereira.

Party-II/Employer is represented by Adv. Shri G. B. Kamat.

Panaji, Dated: 10-10-2017

## AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 29-10-2014, bearing No. 28/27/2014-Lab/617 referred the following dispute for adjudication by this Labour Court-II, Panaji, Goa.

- “(1) Whether the action of the management of M/s. Bohemian Crystal Company (India), Navelim, Goa in terminating the services of Ms. Alita Rebello, Retail Sales Assistant, with effect from 15-09-2013, is legal and justified?
- (2) If not, what relief the Workman is entitled to?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/11/14 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 03-03-2015 at Exhibit 5. The facts of the case in brief as pleaded by the Workman are that she was employed in the employment of the Employer/Party-II (for short "Employer") as 'Retail Sales Assistant' since 20-07-2009. She stated that her last drawn gross salary was Rs. 10,675/-. She stated that by an e-mail dated 15-09-2013, the Employer terminated her services on 15-09-2013 with immediate effect from close day of 15-09-2013.

3. Being aggrieved by the termination order issued by the Employer, she raised an industrial dispute before the conciliation authority by her letter dated 18-11-2013. She contended that her service was terminated without giving her any prior notice and without paying her any legal dues. She submitted that the Employer has engaged the services of another person in her place in its organization, which is still running. She submitted that she was not the junior most employee in her category. She submitted that neither any memo nor show-cause notice or charge-sheet was issued to her before termination of her services. She submitted that neither the Employer conducted any disciplinary enquiry against her nor followed the rules of natural justice. She submitted that the Employer also violated the principles of last come first go. She therefore submitted that the termination of her services by the Employer is illegal, arbitrary, null and void and as such liable to be set aside. She submitted that she has not succeeded in getting any other employment giving

her the same amount of salary. She therefore prayed that she be reinstated in service with full back wages, continuity in service and consequential benefits thereof.

4. The Employer resisted the claim of the Workman, by filing its written statement on 17-04-2015 at Exb. 8. The Employer, as and by way of preliminary objections, submitted that the entire reference is illegal, bad-in-law and not maintainable and as such is liable to be rejected as admittedly no dispute about the alleged illegal termination of her services by the Employer and that a demand for reinstatement was raised by the Workman on them at any point of time and therefore there was no industrial dispute exists within the meaning of Section 2 (k) of the I.D. Act, 1947. The Employer submitted that in the course of conciliation proceedings before the Dy. Labour Commissioner, Margao, Goa, it has offered the Workman to reinstate/take back in service as is clear from its letter dated 17-01-2014 and dated 25-02-2014. The Employer submitted that however, the Workman agreed to accept the said offer subject to Employer accepting her terms and conditions in the first instance as its clear from her letter/reply dated 31-01-2014, which said action of the Workman was illegal, thereby clearly showing that she was not at all interested in rejoining in their services. The Employer therefore submitted that the Workman is not entitled to any reliefs as prayed for or to any other relief. The Employer reiterated that the said offer to reinstate/take back in service the Workman on the same terms and conditions as prevailing prior to 16-09-2013.

5. The Employer stated that it is a proprietary concern of Mr. Oscar Fernandes and is engaged in the business of trading of chinaware, cutlery, glassware etc. The Employer stated that it has its branches at Bangalore, Mumbai, New Delhi, Pune and Ahmadabad, besides at Navelim, Salcete, Goa. The Employer admitted that the Workman was employed with them in the capacity of 'Retail Sales Assistant', vide letter of appointment dated 20-07-2009 on certain agreed terms and conditions mentioned therein. The Employer stated that as a Retail Sales Assistant, it was the duty of the Workman to attend the customers, preparing invoice, sending daily reports, handling customers' requirements. The Employer stated that the Workman was assisting the management in doing the stock count and was in-charge of the Merlin software installed by them in order to help track/ / note down the items that were taken in stock and taken out of stock and causes of excess or short fall of the items as the case may be.



6. The Employer stated that in the month of June, 2012 i.e. the period when the Workman was working as Retail Sales Assistant in the retail show room, annual stock count was taken and it was found that there was variance in the physical/actual stock and that was maintained in the computer/book stock. The Employer stated that however, the said variance was absorbed by them and not a single rupee was charged to the account of any of the staff. The Employer stated that further on 04-09-2012, signatures were taken from the concerned staff including the Workman informing them that all the stock variance was written off as on 18-06-2012 and were further informed that they would be held responsible for the same and in the absence of justified explanation for the same, the amount would be deducted from their salaries. The Employer stated that thereafter it required the retail staff to take physical stock count as on 31-03-2013 as the same was required for accounting purpose as per the practice followed.

7. The Employer stated that however, inspite of the said instructions, the Workman was found either playing games on computer or listening to music or chatting on mobiles, but failed to obey the instructions regarding stock taking, whereas other employees namely Mr. Nigel and Ms. Melvita did not take the said instructions seriously and continued to disobey the instructions to take the physical stock count. The Employer stated that even e-mails were sent to them informing the seriousness of the stock taking but, the same had no effect on them at all. The Employer stated that in the circumstances, it had to inform them that their salaries would be withheld until they completed the stock count. The Employer stated that they finally completed the exercise in August, 2013 and it was found that there was variance in the physical/actual stock and that was maintained in the computer/book stock. The Employer stated that on account of variance in stock as aforesaid, necessary explanation/clarification was sought from the Workman, however, she was found postponing the same on one pretext or the other. The Employer stated that on account of the aforesaid conduct on the part of the Workman and since the value of the missing stock was substantial, they restrained to withhold the payment of salary due to the Workman and also to Mr. Nigel Alcasos, who was working as Asstt. Retail Manager for the month of June, 2013, July, 2013 and from 01-08-2013 to 16-08-2013, totally aggregating to Rs. 26,965/- till she submitted her clarification. The Employer stated that failure of the Workman to give clarification in respect of the missing stock has caused substantial monetary loss to them.

8. The Employer stated that since the Workman as well as the said Mr. Nigel Alcasos could not afford any explanation to the said variance, it was decided to recover the said amount from their respective salaries by informing them. The Employer stated that on account of the above, the Workman tried to get vindictive with them and started all sorts of negative tactics to disrupt the retail operations to the extent that the staff that used to open the shuttle of the show-room were influenced by the Workman to complain about opening the shutters of the show-room and at times the shutters had to be opened by its Senior Manager. The Employer stated that often the Workman would come late and other staff had to wait till they got the keys of the show-room from the Workman. The Employer stated that the frequent negative tactics and the reprimand by the Sr. Manager of her negative tactics resulted in total indisciplined behaviour from the Workman and frequently she was heard arguing and back answering the Sr. Manager. The Employer stated that thereafter the Workman started remaining absent from work and would suddenly appear with her uncle to fight and argue with its Sr. Manager in the office disregarding the seniority of the said Manager and that the office was having other staff on whom such rudebehaviour could have wrong impression. The Employer stated that the Workman was also given opportunity to speak to Mr. Oscar Fernandes, its Proprietor, who even explained that such behaviour was not expected from her.

9. The Employer stated that the father of the Workman had also come to discuss the said matter with Mr. Oscar Fernandes, who explained to him all the facts of the situation and told him that the Workman and Mr. Nigel Alcasos could not explain the variance and therefore her payment was being adjusted and was further informed that in case if the Workman can explain the variance, they are ready to pay her back the amount deducted, but inspite of the same, the Workman could not explain the said variance and as a result the Workman and the said Mr. Nigel Alcasos were held responsible for the variance and necessary deductions were made from their respective salaries. The Employer stated that as the Workman continued with her rude and aggressive behaviour and started disturbing office and retail show-room decorum, its Sr. Manager was constrained to transfer the Workman from the retail show-room at Navelim to the stores/warehouse at Dongrim, Navelim, Salcete-Goa, vide its letter dated 16-08-2013. The Employer stated that however, neither the Workman refused to sign or accept the said letter

nor joined the stores in terms of transfer letter and on the contrary, started remaining absent on the ground of alleged sickness from 19-08-2013 and as such neither attended the office or the stores at any time. The Employer stated that she was informed by its Sr. Manager that she was going to be relieved from her duties. The Employer stated that considering that the Workman would again be playing her tantrums and having obtained the opinion of Mr. Nigel Alcasos, who opined them that the Workman would not come to stores and that she would continue to exert her negative attitude in stores or wherever she is, it has taken a decision to relieve the Workman from her duties.

10. The Employer stated that though it had initially quantified the variance of stock/loss of items to Rs. 59,490/- for the period from 18-06-2012 to 31-03-2013, later on upon conducting detailed and thorough investigation it was shocked and surprised when it was revealed that there was misappropriation of an amount to the tune of approximately Rs. 25 lakhs under various categories such by adjustment of M.R.P. price at the show-room estimated to a tune of Rs. 15 lakhs, adjustment in quantities sold and loyalty card fraud, which was to the tune of Rs. 10 lakhs. The Employer stated that upon confronting the said evidence, said Mr. Nigel Alcasos, the Asstt. Retail Manager in the Retail show-room unequivocally admitted of his involvement in the said fraud, embezzlement and misappropriation and approached Mr. Oscar Fernandes, its Proprietor apologizing for the said conduct on his part and praying for leniency and further offered to refund an amount of Rs. 8 lakhs and further requested him not to take any drastic action in the matter as the same will jeopardized his character, his family's reputations etc. and signed an agreement dated 22-08-2015 with them acknowledging his involvement and agreeing to refund an amount of Rs. 8 lakhs and further agreeing to co-operate in the investigation. The Employer stated that thereupon, Mr. Oscar Fernandes, its Proprietor agreed to the said proposal without giving up/waiving his right to file appropriate criminal complaint in respect of fraud, embezzlement and misappropriation committed by the said Mr. Nigel Alcasos. The Employer stated that Mr. Nigel Alcasos also refunded a total sum of Rs. 8 lakhs misappropriated by him and also offered to resign from the job and further agreed for adjustment of the salaries due to him for the months of January, 2015, February 2015, gratuity and other dues payable to him in respect of his employment with them against the losses caused to them.

11. The Employer stated that during the period when the said fraud, embezzlement took place in the retail show-room, the Workman was very much working with the said Mr. Nigel Alcasos and as such her involvement in the aforesaid offences cannot be ruled out and therefore participation of the Workman in the said investigation/enquiry is very much required. The Employer therefore submitted that they are ready to take back/ /reinstate the Workman in service on the same terms and conditions as prevailing prior to 16-09-2013, which could enable them to conduct the necessary enquiry/investigation as per law and take appropriate action as deemed fit as per law including filing of civil suit for recovery of amount towards losses, damages caused to them as well as filing criminal complaint for criminal misappropriation as deemed fit and proper against the staff involved. The Employer finally denied the overall case of the Workman as pleaded and prayed for dismissal of the present reference.

12. Thereafter, the Workman filed her Rejoinder at Exhibit-9 on 08-06-2015. The Workman, by way of her Re-joinder denied each and every statement, averments and submissions made by the Employer vide their Written Statement filed in the present proceedings and reiterates and confirms the statements, averments and submissions made by her in her statement of claim.

13. Based on the pleadings filed by the respective Parties, this court has framed the following issues at Exb.-12.

1. Whether the Employer/Party-II proves that the reference is illegal, bad-in-law and not maintainable in view of the reasons stated in para 2 (a), 2 (b) of the Written Statement?
2. Whether the Workman/Party-I proves that the action of the Employer in terminating her services w.e.f. 15-09-2013, is illegal and unjustified?
3. Whether the Employer/Party-II proves that they had transferred the services of the Workman/Party I vide their letter dated 16-08-2013?
4. Whether the Workman/Party-I proves that he is entitled to any relief?
5. What order? What award?

14. My Findings to the aforesaid issues are as under:

- |                     |                       |
|---------------------|-----------------------|
| (a) Issue No. 1     | : In the affirmative. |
| (b) Issue No. 2     | : In the negative.    |
| (c) Issue No. 3     | : In the affirmative. |
| (d) Issue No. 4 & 5 | : As per final order. |

## REASONS

Both the parties chose to file their synopsis of written arguments respectively. I have carefully considered the written submissions filed by the respective parties. I have also carefully perused the entire records of the present case and is of the considered opinion as under.

## 15. Issue No. 1:

The Employer, in its written statement filed in the present proceedings, as and by way of its preliminary objections, submitted that admittedly no dispute about alleged illegal termination of her services by them and demand for reinstatement, was raised by the Workman on them at any point of time and therefore there was no industrial dispute within the meaning of Section 2 (k) of the I.D. Act, 1947, which came into existence as on the date of making of the reference and therefore the present reference is liable to be rejected.

16. The Hon'ble Supreme Court of India, in its judgment in the case of **Shambu Nath Goyal v/s Bank of Baroda, Jullundar, reported in (1978) 2 SCC 353** held that *"The definition of industrial dispute in Section 2(k) of the Industrial Disputes Act, 1947 shows that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non"*.

The principle laid down by the Hon'ble Supreme Court of India in its aforesaid case is applicable to the present case. Hence, the contention of the Employer that the reference is not maintainable or incompetent as no demand notice was served upon them in regards to the termination of service of the Workman, is without any merits.

17. Ld. Adv. Shri G. B. Kamat, representing the Employer, further submitted that in the course of conciliation proceedings before the Dy. Labour Commissioner, Margao, Goa, it had offered the Workman (in this case a women) to reinstate/take back in service as is clear from the letter dated 17-01-2014 and dated 25-02-2014, however, the Workman agreed to accept to such offer subject to the Employer accepting her terms and conditions in the first instance as its clear from her letter/ reply dated 31-01-2013, which said action of the

Workman was illegal thereby clearly showing that the Workman was not at all interested in re-joining in the services of the Employer. He submitted that the Employer again reiterated the said offer of reinstatement/taking back in its service to the Workman on the same terms and conditions as prevailing prior to 16-09-2013. However, the Workman did not accept the same and as such the Workman is not entitled to any relief as prayed for. In support of his contention, he relied upon the following four judgments of Hon'ble High Court of Bombay.

18. In the case of **M/s. Sonal Garments v/s. Trimbak Shankar Karve, reported in 2003 (96) FLR 498**, the Hon'ble High Court of Bombay has held as under:

*"...whenever the employer offers to reinstate the workman at any stage of the dispute or proceeding and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any back wages from the date of such offer, conditional or unconditional. He must first accept the offer and get reinstated in employment and therefore continue to contest for the relief of back wages, if any. In the present case there was an unconditional offer of reinstatement made by the employer in the written statement itself but it was not accepted by the workman. Therefore, as stated by me hereinbefore, he is not entitled to get reinstatement with full back wages at all....."*

19. In the case of **M/s. Competition Printing Press v/s Shriut Jai Prakash Singh, reported in 2001 (1) CLR 948**, the Hon'ble High Court of Bombay has held as under:

*".....Even the workman had admitted in his oral evidence that such offers were made to him by the employer and he did not accept the same as there was no offer of back wages and that he was not prepared to join his duty without back wages. This very fact of adamant and obstinate attitude on the part of the workman clearly indicates that he himself had abandoned the employment by remaining absent from 10-11-1989 for the reasons best known to him and under wrong advice, he approached the Government machinery with ulterior motives to extract some money if possible. In my opinion no genuine and bona fide workman who was aggrieved by an illegal order of termination would deny the offer of reinstatement and would not readily give up the valuable job for the sake of few days back wages. Alternatively the workman could have accepted reinstatement before the Government Labour Officer*

and even before the Conciliation Officer praying to refer the dispute restricting to the entitlement of the backwages as he was already reinstated during the proceedings before the Government Labour Officer or the Conciliation Officer as the case may be. Lastly he could have accepted the offer of reinstatement made by the petitioner employer in the written statement even before the Labour court reserving his right to get back wages and joining the employment without prejudice to the aforesaid right.....

“...According to me, the conduct of the workman was totally unreasonable in refusing to accept the reinstatement without backwages on the first date of hearing before the Government Officer. The Labour Court has failed to consider all these aspects and has mechanically recorded its finding that the petitioner employer having terminated the employment of the workman was liable to reinstate the workman with full back wages and continuity of service....”

20. In the case of **M/s. VFC Industries v/s. Balu Ganpat Sakpal**, reported in 2006 (6) MhLJ 535, the Hon'ble High Court of Bombay has held as under:

“.....12. In the present case, it has come on record that the petitioner made an offer of employment to the respondent on 10th May, 2001. The letter was replied by him on 29th May, 2001. He declined the offer and did not join the employment. In the circumstances, the respondent would not be entitled to claim reinstatement nor would he be entitled to claim back wages from the date of receipt of the letter which should be around 15th May, 2001. The Industrial Court therefore erred in confirming the order for reinstatement and further erred in allowing back wages after 15th May, 2001. In the circumstances the orders passed by the courts below need to be set aside and modified. Accordingly, the writ petition is allowed. The impugned order is set aside and in its place the following order is substituted.

“....13. It is declared that the petitioner-company indulged in unfair labour practice by orally terminating the services of the respondent on 1st September, 1998. However, in view of the offer made by the petitioner-company to the respondent to employ him and declining of the said offer by the respondent, he is not entitled to an order of reinstatement nor entitled to any back wages from the date of offer.

21. In the case of **M/s. Madhuri Chandulal Lakhani v/s. Prashant Shripad Satpute**, reported in 2015 LLR 239, the Hon'ble High Court of Bombay reiterated the aforesaid position and has held in para 11 as under:

“....11.....Once the offer of reinstatement was made by the employer before the Labour Commissioner, there was no good or valid reason for Prashant to resume the duties. The issue of back wages could always have been sorted out later on. Nothing prevented Prashant from initiating appropriate proceedings for securing back wages of hardly six to seven months, once the employment was secured by the offer of reinstatement made by the employer before the Labour Commissioner. There was no justification for Prashant to decline the offer of reinstatement upon the spacious plea that the same was not accompanied by back wages for a period of about six to seven months. Normally, a workers who is out of employment, would not, in such circumstances decline the offer of reinstatement...”

22. The principle laid down by the Hon'ble High Court of Bombay in its aforesaid cases is well established and also applies to the case in hand. Applying the law laid down by the Hon'ble High Court of Bombay, in the case in hand, the Employer, in para 2 (b) of its written statement, pleaded that in the course of conciliation proceedings before the Dy. Labour Commissioner, Margao, Goa, it offered to reinstate/take back in service the Workman, vide its letter dated 17-01-2014 and dated 25-02-2014, however, the Workman agreed to accept the said offer subject to the Employer accepting her terms and conditions in the first instance as is clear from her letter/reply dated 31-01-2014, which said action of the Workman was illegal, thereby clearly showing that she was not at all interested in re-joining the Employer and that it has reiterated the said offer of reinstatement/taking back in service the Workman on the same terms and conditions as prevailing prior to 16-09-2013. The aforesaid pleadings of the Employer appearing in para 2 (b) of its written statement has been vaguely denied by the attorney of the Workman in his rejoinder filed in the present proceedings. Further, the offer of reinstatement reiterated by the Employer to the Workman in para 2 (b) of its written statement has not been accepted by her either by joining the duties or by making any suitable application before this court showing her willingness to join the duties. Failure to do so, the Workman also failed to accept the said offer of reinstatement unconditionally and consequently, resumed her duties. In the circumstances, the



Workman is not entitled to any relief of reinstatement as well as back wages and the reference is therefore liable to be rejected. Hence, it is held that the Employer proved that the reference is not maintainable in law. The issue No. 1 is therefore answered in the affirmative.

23. Issue No. 2:

The burden to prove the issue No. 2 is on the Workman. In order to prove the said issue No. 2, the Workman examined her special power of attorney holder and uncle, Mr. Roberto Dos Reis Falcao, r/o. Alto-Dabolim-Goa as her sole witness. Ld. Adv. Shri. G.B. Kamat, representing the Employer submitted that the evidence of the said power of attorney holder is inadmissible in law as the said power of attorney holder has not rendered any 'acts' in pursuance to the said instrument of special power of attorney dated 28-04-2015 executed in his favour nor he has any personal knowledge of the facts of the present case and relied upon the following two judgments of Hon'ble Supreme Court of India.

24. In the case of **Vidyadhar v/s. Manikrao reported in AIR 1991 SC 1441**, the Hon'ble Supreme Court of India held that "*where a party to the suit does not appear in the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that a case setup by him is not correct and further that it would give rise to an inference adverse against him...*"

25. In the case of **Janaki Vashdeo Bhojwani v/s. Indusind Bank Ltd. and Ors., reported in AIR 2005 SC 439**, the Hon'ble Supreme Court of India held that "*...the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.*"

26. The principal laid down by the Hon'ble Apex court in its aforesaid case is well recognized. Applying the law laid down by the Hon'ble Apex Court in its aforesaid case, in the case in hand, the

Workman raised the dispute pertaining to her alleged illegal dismissal from service by the Employer w.e.f. 15-09-2013. Per contra, it is the case of the Employer as per their pleadings that they have not terminated the services of the Workman, but transferred her services at its store at Dongrim, Navelim, Goa on account of her involvement in fraud, embezzlement, misappropriation resulting in monetary loss of around 25 lakhs. The Employer has however, in para 2 (b) of its written statement submitted that it has offered reinstatement to the Workman as is clear from its letter dated 17-01-2014 and 25-02-2014 and that it reiterate the said offer to reinstate/take back in service the Workman on the same terms and conditions as prevailing prior to 16-09-2013. The term 'reinstate' implies taking back in service after termination of service. Thus, from the pleadings made in para 2 (b) of the written statement of the Employer, it implies that the Workman was offered for the reinstatement in services after termination of her services. It was therefore incumbent upon the Workman to prove that the termination of her services is illegal and unjustified. The sole witness and attorney of the Workman in his oral evidence on record deposed that the Workman was consulting him for discussing and also for drafting her various replies and other correspondence as well as her letters of dispute to the conciliation authorities and as such he is aware of the facts of the present case. However, in his cross-examination, the said attorney of the Workman deposed that he came to know about the facts of the present case after the alleged termination of service of the Workman. The aforesaid evidence on record indicates that the said attorney of the Workman was not having the personal knowledge of the facts of the present case nor has he rendered any 'acts' in pursuance to the instrument of special power of attorney issued in favour of him and as such the evidence of the said attorney of the Workman is inadmissible in law. In the circumstances, there is no evidence on record to prove that the action of the Employer in allegedly terminating the service of the Workman w.e.f. 15-09-2013 is illegal and unjustified. In the absence of evidence on record, it is held that the Workman failed to prove that the action of the Employer in terminating her service w.e.f. 15-09-2013 is illegal and unjustified. The issue No. 2 is therefore answered in the negative.

27. Issue No. 4:

While deciding issue No. 1 hereinabove, I have already discussed and came to the conclusion that the Workman is not entitled to any relief of reinstatement as well as back wages. Similarly,

while deciding the issue No. 2 hereinabove, I have discussed and came to the conclusion that the Workman failed to prove that the action of the Employer in terminating her services w.e.f. 15-09-2013 is illegal and unjustified. The Workman is therefore not entitled to any relief. The issue No. 4 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

## ORDER

1. It is held that the reference as to whether the action of the management of M/s. Bohemian Crystal Company (India), Navelim, Goa in terminating the services of Ms. Alita Rebello, Retail Sales Assistant, with effect from 15-09-2013, is legal and justified, is not maintainable.
2. The workman Ms. Alita Rebello, is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),  
Presiding Officer,  
Labour Court-II.

## Notification

No. 28/9/2017-LAB/Part-I/797

The following award passed by the Labour Court-II, at Panaji-Goa on 23-10-2017 in reference No. IT/12/05 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Georgina Saldanha*, Under Secretary (Labour).  
Porvorim, 20th November, 2017.

IN THE LABOUR COURT-II  
GOVERNMENT OF GOA  
AT PANAJI

(Before **Shri Suresh N. Narulkar, Hon'ble Presiding Officer**)

Case No. Ref. IT/12/05

Miss. Vijayshree N. Naik Tari,  
H. No.42, Taripanta,  
Sanguem-Goa.

... Workperson/Party-I

V/s

M/s. Sanguem Municipal  
Council,  
Sanguem-Goa.

... Employer/Party-II

Workperson/Party-I represented by Shri P. Gaonkar.

Employer/Party-II represented by Adv. Shri A.V. Nigalye.

Panaji, Dated: 23-10-2017

## AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 19-04-2005, bearing No. 28/08/2005-LAB/167/3 referred the following dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa. Thereafter, the Appropriate Government transferred the present reference for its adjudication to this Labour Court II, vide its order dated 09-02-2016.

“(1) Whether the action of the Sanguem Municipal Council, Sanguem, in terminating the services of Miss. Vijayshree N. Naik Tari, Library Attendant, with effect from 22-4-2003, is legal and justified?”

(2) If not, to what relief, the Workperson is entitled?”

2. On receipt of the reference, a case was registered under No. IT/12/05 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workperson/Party-I (for short 'Workperson'), filed her Statement of Claim on 09-06-2005 at Exb-3. The facts of the case in brief, as pleaded by the Workperson are that she was working with the Employer/Party II (for short 'Employer') as 'Library Attendant' with effect from 31-10-2000. She stated that her duty timing were 8.00 a.m. to 11.30 a.m. and 4.00 p.m. to 7.30 p.m. She stated that she used to sign the attendance register maintained by the Employer. She stated that her duties were to collect newspapers and magazines daily, to issue the magazine and books to the public, who come to read in the library, to collect and pay the bills of newspapers and magazines, to maintain the records of books and magazine, to issue and keep the books and magazines in proper place and any other clerical work allotted by the Employer. She stated that the work of library attendant is a permanent nature of job. She stated that she has continuously worked up to 21-04-2003. She stated that she was drawing a salary of Rs. 56/- per working day. She stated that when she went to resume her duties on 22-04-2003, she was told that her services have been terminated and she was not allowed to resume the duty.

3. Being aggrieved by the termination of her services, the Workperson raised an industrial dispute before the Dy. Labour Commissioner, Margao, Goa, vide her representation dated 22-05-2003, which ended in failure. She submitted that at the time of termination of her services, neither the Employer has conducted any enquiry nor issued any memo or charge-sheet for any misconduct. She submitted that at the time of termination of her services, no legal dues such as retrenchment compensation, notice pay, gratuity etc. was paid to her, thus, violated Sec. 25-F of the I.D. Act. She submitted that the Employer has employed a new person to carry out the work performed by her. She therefore submitted that the action of the Employer in terminating her services is illegal, unjustified and bad-in-law. She submitted that since the termination of her services, she is unemployed and could not succeed in getting any employment. The Workperson therefore prayed that the termination of her services be declared as illegal, improper and unjustified and direct the Employer to reinstate her in service with full back wages and continuity in service.

4. The Employer resisted the claim of the Workperson by filing its written statement on 10-05-2006 at Exb. 6. The Employer, as and by way of its preliminary objections, submitted that the reference is not maintainable as it has been made without application of mind and that the matter referred to the tribunal is not an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947. The Employer submitted that it is not an 'employer' within the meaning of Section 2 (j) and the Party I is not a 'workman' within the meaning of Section 2 (s) of the said Act. The Employer submitted that the Workperson was not employed on the sanctioned post and that she was working purely on daily wages and on casual basis. The Employer submitted that the Party I has/had no lien on any post in their employment and that she has no claim for employment with them. The Employer submitted that there is/was no employer-employee relationship between themselves and the Workperson.

5. The Employer stated that it is a municipal council constituted under the Goa Municipal Act, 1968 and is governed by the provisions of said Act and the Rules made thereunder. The Employer stated that it is constituted in C class municipal area. The Employer stated that its sources of funds are from Government grants, taxes and other meagre revenues. The Employer stated that the Workperson was not employed on any sanctioned post nor there is/was any post of Library Assistant

or Assistant Librarian in its organization. The Employer submitted that the Workperson has therefore no right, claim or lien to the said post. The Employer stated that it is operating a small library in Sanguem town for the benefit of the residents. The Employer stated that a few magazines, daily newspapers and some books are kept in library. The Employer stated that the number of persons visiting the library are very limited since Sanguem is small town and the number of literate persons and that to, having reading habits is still smaller. The Employer stated that however in public interest, it is continuing with the operation of the said library, though it puts heavy strains on its finances. The Employer stated that the said library does not have a Librarian or an Assistant Librarian considering the limited volume of work which can be done by an Assistant.

6. The Employer stated that the Workperson was working as a Library Assistant in its library purely on daily wages of Rs. 56.25 per day. The Employer stated that she was paid her wages on the days she worked and her employment was of casual nature. The Employer stated that her employment was an interim arrangement for the benefit of the public. The Employer stated that since the Workperson was not appointed on a sanctioned post, she had no lien on the post nor have a right to continue in its employment. The Employer stated that her employment was not continuous and she had not put in any continuous service with the Employer.

7. The Employer stated that since its resources are very limited, it decided to discontinue with her employment as Library Attendant as the work done by her as Library Attendant was limited which could be done by its other employees and the amount saved thereby could be spent for other useful purposes. The Employer stated that they discontinued the employment of the Workperson from 08-04-2003. The Employer submitted that the discontinuance of the employment of the Workperson is perfectly legal, just and proper and the Workperson had no legal right to complaint against the same. The Employer stated that after discontinuation of her services from its service, the Workperson was employed as remedial para teacher at Goa Sarva Shiksha Abhiyan, Block Research Centre, Sanguem from the year 2006-2010. The Employer stated that thereafter the Workperson was transferred in the same organization to Block Research Centre, Ponda, Goa, from the year 2010, where she is working in the same capacity till date. The Employer stated that the monthly salary

of the Workperson at Goa Sarva Shiksha Abhiyan was Rs. 3000/- per month in the year 2008. The Employer stated that the present salary of the Workperson is Rs. 5000/- per month. The Employer denied the overall case as pleaded by her and prayed for dismissal of the present reference.

8. Thereafter, the Workperson filed her Re-joinder on 06-06-2006 at Exb.7. The Workperson, by way of her Re-joinder, confirms and reiterates all the submissions and averments made by her in her claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by her.

9. Based on the pleadings filed by the respective parties herein above, this court framed the following issues on 19-06-2006 at Exb. 8.

1. Whether the Party I proves that she was employed with the Party II as a "Library Attendant" w.e.f. 31-10-2000 till 21-04-2003 continuously?
2. Whether the Party I proves that the termination of her services w.e.f. 22-04-2003 by the Party II is illegal, unjustified and bad-in-law?
3. Whether the Party II proves that the dispute referred to this Court is not maintainable on account of the reasons stated in para 2 clause (a) (b) (c) and (f) of the written statement?
4. Whether the Party II proves that there is no post of Library Assistant or Assistant Librarian in the organization of Party II?
5. Whether the Party II proves that the Party I was not employed on sanctioned post and that the Party I was employed purely as daily wages on casual basis?
6. Whether the Party I is entitled to any relief?
7. What Award?

10. My answers to the aforesaid issues are as under:

- |                     |                       |
|---------------------|-----------------------|
| (a) Issue No. 1     | : In the Affirmative. |
| (b) Issue No. 2     | : In the Affirmative. |
| (c) Issue No. 3     | : In the Negative.    |
| (d) Issue No. 4     | : In the Negative.    |
| (e) Issue No. 5     | : In the Affirmative. |
| (f) Issue No. 6 & 7 | : As per final Award. |

#### REASONS

Both the parties chose to file their synopsis of written arguments. I have carefully perused the

entire records of the present case including the synopsis of written arguments filed by both the parties. I have also carefully considered the synopsis of written arguments filed by the respective parties.

#### 11. Issue No. 1:

To prove her case, the Workperson has examined herself and produced on record certain documentary evidence in support of her oral evidence. The evidence of the Workperson on record indicates that she was appointed as 'Library Attendant' w.e.f. 31-10-2000 without making any application or without going through any interview either oral or written for the said post. The evidence on record further indicates that the Workperson has continuously worked on the said post from 31-10-2000 till 21-04-2003. It is therefore held that the Workperson proves that she was employed with the Employer as a 'Library Attendant' w.e.f. 31-10-2000 till 21-04-2003 continuously. The issue No. 1 is therefore answered in the affirmative.

#### 12. Issue No. 2:

While deciding the issue No.1 hereinabove, I have discussed and come to the conclusion that the Workperson proved that she was employed with the Employer as a 'Library Attendant' w.e.f. 31-10-2000 till 21-04-2003 continuously.

13. Section 25-F of the I.D. Act, 1947 lays down the pre-conditions for a valid retrenchment. The Workperson challenged the termination of her services w.e.f. 22-04-2003 by contending to be illegal and unjust as it is in violation of Section 25-F of the I.D. Act, 1947. It is therefore necessary to refer to Section 25-F of the I. D. Act, 1947.

25-F. Conditions precedent to retrenchment of workmen. – No Workperson employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the Workperson has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the Workperson has been paid in lieu of such notice, wages for the period of the notice;
- (b) the Workperson has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and



- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

14. In the instant case, the evidence on record indicates that when the Workperson went to resume for her duties on 22-04-2003, she was told that her services were terminated and she was not allowed to resume the duties. The evidence on record indicates that neither any show-cause notice, charge-sheet or enquiry was conducted at the time of termination of her services nor she was paid her terminal benefits, such as retrenchment compensation, notice pay, gratuity etc. The said action of the Employer Municipality in terminating the services of the Workperson w.e.f. 22-04-2003 is in violation of Section 25-F of the I.D. Act, 1947 and as such it is illegal, unjustified and bad-in-law. Hence, it is held that the Workperson proved that action of the Employer Municipality in terminating the services of the Workperson w.e.f. 22-04-2003 is illegal, unjustified and bad-in-law. The issue No. 2 is therefore answered in the affirmative.

15. *Issue No. 3:*

The Employer, as and by way of its preliminary objections, submitted that the entire reference is not maintainable as it has been made without any application of mind, that the matter referred to the Hon'ble Tribunal is not an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947 nor the Party II is an Employer within the meaning of Section 2 (j) and the Party I is not a Workperson within the meaning of Section 2 (s) of the said Act, and that there is/was no employer-employee relationship between themselves and the Workperson.

16. While deciding the issue No. 1, I have discussed and come to the conclusion that the Workperson proved that she was employed with the Employer as a 'Library Attendant' w.e.f. 31-10-2000 till 21-04-2003 continuously. The evidence on record indicates that as a 'Library Attendant' of the Employer, she used to collect the newspapers and magazines daily from papers stall, to issue magazines and books to the public who came to read in the library, to collect and pay the bills of newspaper and magazines, to maintain the records of books and magazines, to issue and keep them in proper place and any other clerical work allotted to her by the Employer. The aforesaid predominant nature of duties and responsibilities performed by the Workperson indicates that she was performing the clerical nature of duties and as

such she is a 'Workman' within the meaning of Section 2 (s) of the I.D. Act and the Party II is an 'employer' within the meaning of Section 2 (j) of the I. D. Act, 1947. The aforesaid facts on record clearly proves that there is/was employer-employee relationship between the Employer and the Workperson. As the dispute raised by the Workperson pertaining to her non-employment, it is an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947. In view of above, I do not find any reasons as to the non-maintainability of the present order of reference. It is therefore held that the Employer failed to prove that reference issued to this court is not maintainable on any of the reasons stated in para 2 of its written statement. The issue No. 3 is therefore answered in the negative.

17. *Issue No. 4:*

The burden to prove the present issue No. 4 was on the Employer to prove that there is no post of Library Assistant or Assistant Librarian in its organization. The Employer has however, failed to produce on record any material evidence in support of the present issue No. 4 either by way of cross-examination or by leading any material evidence. In the circumstances, it is held that the Employer failed to prove that there is no post of 'Library Assistant' or 'Assistant Librarian' in its organization. The issue No. 4 is therefore answered in the negative.

18. *Issue No. 5:*

The evidence on record indicates that neither the Workperson attended any interview either written or oral to the post of Library Attendant nor could she possess the necessary required educational qualification in terms of GDD Municipalities C & D Posts Recruitment Rules, 1986. The evidence on record indicates that the Workperson was not issued any written appointment order. The evidence on record indicates that the Workperson was paid on daily rate basis and that she was not paid wages whenever she remained absent. The evidence on record indicates that she was not entitled for any leave, bonus, HRA, DA or any other allowances. The aforesaid facts on record clearly proves that the Workperson was not employed on any sanctioned post and that she was employed purely on daily wages and on casual basis. Hence, it is held that the Employer proved that the Workperson was not employed on any sanctioned post and that she was employed purely on daily wages and on casual basis. The issue No. 5 is therefore answered in the affirmative.

## 19. Issue No. 6:

In the case of **Sr. Superintendent Telegraph (Traffic), Bhopal v/s. Santosh Kumar Seal & Ors., reported in (2010) 6 SCC 772**, the Hon'ble Supreme Court of India has held that *"in the last few years it has been consistently held by the Supreme Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. The compensation of Rs. 40,000/- to each of the workmen (Respondents 1 to 14) shall meet the ends of justice. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9% per annum."*

The principle laid down by the Hon'ble Apex Court in its aforesaid judgment binds a precedent upon me.

20. Applying the law laid down by the Hon'ble Apex Court in its aforesaid judgment, in the case in hand, while deciding the issue No. 2, I have discussed and come to the conclusion that the action of the Employer in terminating the services of the Workperson w.e.f. 22-04-2003 is illegal, unjustified and bad-in-law. Similarly, while deciding the issue No. 5, I have discussed and come to the conclusion that the Workperson was not employed on any sanctioned post and that she was employed purely on daily wages and on casual basis. The evidence on record indicates that the Workperson does not possess the necessary required educational qualification to the post of 'Library Assistant' or 'Assistant Librarian' in terms of GDD Municipalities C & D Posts Recruitment Rules, 1986.

21. The Workperson in her pleadings as well as her oral evidence on record deposed that since the termination of her services, she is unemployed and could not succeed in getting any employment. To the contrary, it is the case of the Employer that after discontinuation of the services of the Workperson, she was employed as a remedial para teacher at Goa Sarva Shiksha Abhiyan, Block Research Centre, Sanguem from the year 2006-2010

and that thereafter she was transferred in the same organization to Block Research Centre, Ponda, Goa, from the year 2010 where she is working in the same capacity till date. The Workperson, in her cross-examination deposed that she is working on contract basis under the scheme Sarva Shiksha Abhiyan for the period from 2006 till 2010 and earning Rs. 3000/- p.m. to the contrary as the Library Attendant of the Employer she was paid daily wages of Rs. 56/- per day. In the circumstances, the Workperson is not entitled to relief of reinstatement in service. In my considered opinion, a monetary compensation of Rs. 40,000/- (Rupees forty thousand only) shall meet the ends of justice.

In view of the above, I proceed to pass the following order:

## ORDER

1. It is held that the action of the Sanguem Municipal Council, Sanguem, in terminating the services of Miss. Vijayshree N. Naik Tari, Library Attendant, with effect from 22-4-2003, is illegal and unjustified.
2. It is held that the Sanguem Municipal Council, Sanguem, is therefore directed to pay to the Workperson Miss. Vijayshree N. Tari, a monetary compensation of Rs. 40,000/- (Rupees forty thousand only).
3. No order as to costs.

Inform the Government accordingly.

Sd/-  
(Suresh N. Narulkar),  
Presiding Officer,  
Labour Court-II.

## Notification

No. 28/9/2017-LAB/Part-I/798

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 28-09-2017 in reference No. IT/36/12 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Georgina Saldanha, Under Secretary (Labour).

Porvorim, 20th November, 2017.

IN THE INDUSTRIAL TRIBUNAL AND  
LABOUR COURTGOVERNMENT OF GOA  
AT PANAJI**(Before Mr. Vincent D'Silva, Hon'ble Presiding  
Officer)**

Ref. No. IT/36/12

Smt. Fakirawa Odra,  
Honour Camp, Birla,  
Zaurinagar, Sancoale,  
Goa (403 726)

... Workman/Party I

V/s

M/s. Majorda Beach Resort,  
Majorda, Goa (403 713). ... Employer/Party IIWorkman/Party I represented by Shri Subhash Naik.  
Employer/Party II represented by Adv. Shri M. S.  
Bandodkar.

## AWARD

**(Delivered on this the 28th day of the month  
of September of the year 2017)**

By Order dated 28-05-2012, bearing No. 28/58/  
/2011-LAB/278, the Government of Goa in exercise  
of powers conferred by Section 10 (1)(d) of the  
Industrial Disputes Act, 1947 (for short The Act),  
has referred the following dispute to this Tribunal  
for adjudication.

- (1) Whether the action of the management of  
M/s. Majorda Beach Resorts, Majorda, Goa, in  
dismissing from service its workperson  
Smt. Fakirawa Odra, Garden Labourer, with  
effect from 01-02-2011, is legal and  
justified?
- (2) If not, what relief the workman is entitled  
to?"

2. Upon receipt of the reference, it was registered  
as IT/36/12 and registered A/D notices were issued  
to both the parties. Pursuant to service of notices,  
Party I filed a Claim Statement at Exhibit 5. Party  
II filed a Written Statement at Exhibit 7. Party I  
then filed the rejoinder at Exhibit 8.

3. In short, the case of the Party I is that the  
Party I was deputed to work at M/s. Ramesh Hotels  
Resort Ltd. at Utorda, Goa in the year 1997 which  
belonged to one of the Directors of Party II. There  
she worked as 'Garden Labourer' till April 2003  
and that in April 2005, she received summons  
dated 06-04-2005 from Vasco Police Station asking  
her to remain present at the Police Station.  
Accordingly, she visited the Vasco Police Station  
at Vasco on 11-04-2005 where her statement was

recorded by the Police regarding an alleged  
incident of sexual exploitation of her colleague by  
Director of Party II Company, in which she was a  
witness. It is stated that on 12-04-2005 when Party  
I reported for work as usual at around 9.00 a. m. at  
the hotel, she was stopped by the Security Guard  
at the gate and not allowed to enter the hotel  
premises.

4. It is also the case of Party I that she again  
reported for work at the hotel on 13-04-2005 and  
14-04-2005 at around 9.00 a.m. and on both those  
days also, she was not allowed to report for work  
by the security stating that the General Manager  
had told them not to allow her to report for duty.  
Aggrieved by the decision of the Party II in refusing  
employment to her, she raised an industrial dispute  
before Party II vide letter dated 19-05-2005  
regarding illegal and unjustified refusal of  
employment w.e.f. 12-04-2005. However, after  
re-instatement Party II started harassing Party I  
with a view to pressurize her to leave the job. She  
was given dirty jobs like cleaning garbage and  
was not allowed to mix with other employees. The  
Party II thereafter suspended her from service vide  
suspension order dated 30-08-2007. She continued  
to be under suspension till the enquiry was  
instituted and after enquiry was conducted, she  
was dismissed from service. The enquiry was  
conducted in violation of principles of natural  
justice. The Enquiry Officer did not allow her to  
examine the witnesses. The Party I, therefore be  
reinstated in service with full back wages and  
continuity of service with costs.

5. In the Written statement, the Party II claimed  
that since Party I committed serious acts of  
misconducts, the management conducted fair and  
proper enquiry by following the principles of  
natural justice, as per the Service Rules applicable  
to the Party I. The said termination is fully legal  
and justified and therefore no relief could be  
granted to the Party I and the Hon'ble Tribunal  
should not interfere with the said disciplinary  
action of the Party II and on this ground alone, the  
entire reference ought to be rejected. The decision  
of the Party II is based on fair and proper reasoning,  
therefore the question of re-instating Party I in  
service with full back wages and continuity of  
service with costs does not arise. The Party I has  
not made out any case and therefore no reliefs be  
granted as claimed by the Party I in the claim  
statement.

6. In the rejoinder at Exhibit 7, Party I denied the  
contention of the Party II as stated in the written  
statement.

7. In the course of proceedings, the parties arrived at an amicable settlement and filed the Consent terms dated 28-09-2017 at Exhibit 18 colly along with a copy of payment receipt.

8. The consent terms are reproduced herein below:-

- 1) It is agreed by the management that Smt. Fakirawa Odra shall be paid a sum of Rs. 4,00,000/- (Rupees four lakhs only) in full and final settlement of all claims arising out of her employment.
- 2) Smt. Fakirawa Odra shall accept the amount of money mentioned in clause No. 1 in full and final settlement of her all claims arising out of her employment. The amount mentioned in clause No. 1 includes all the claims of Party I including Gratuity, Bonus, Leave Encashment, LTA, Medical, Salary, Ex-gratia etc. and Smt. Fakirawa Odra further confirms that she shall have no further claims of whatsoever nature against the Party II, including any claims which can be computed in terms of money including any claim of re-instatement or re-employment with the company/Hotel.

9. The above consent terms are signed by the workman, Smt. Fakirawa Odra along with her representative, Shri Subhash Naik Jorge on behalf of Party I and the representative of Party II along with his Adv. Shri M. S. Bandodkar on behalf of Party II. I have gone through the consent terms filed as above, which in my view, are just and fair and in the interest of both the Workman/Party I as well as Employer/Party II and hence, the same are accepted.

10. In view of above, I pass the following:

#### ORDER

1. The reference at the instance of Workman/Party I stands disposed of in view of the consent terms filed by both the parties at Exhibit 18 colly.
2. No order as to costs.
3. Inform the Government accordingly.

Sd/-  
(Vincent D'Silva),  
Presiding Officer,  
Industrial Tribunal and  
Labour Court.

#### Notification

No. 28/9/2017-LAB/Part-I/794

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 23-10-2017 in reference No. IT/31/08 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Georgina Saldanha, Under Secretary (Labour).  
Porvorim, 20th November, 2017.

IN THE INDUSTRIAL TRIBUNAL  
AND LABOUR COURT  
GOVERNMENT OF GOA  
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding  
Officer)

Ref. No. IT/31/08

Shri R. G. Furtado,  
F3/A1, Virgincar Residency,  
1st Floor, Ambaji,  
Fatorda, Goa.

... Workman/Party I

V/s

Mr. Zuari Industries Ltd.,  
Jaikissan Bhawan,  
Zuarinagar, Goa.

... Employer/Party II

Workman/Party I present in person.

Employer/Party II represented by Ld. Adv. Shri G. K. Sardessai.

#### AWARD

(Delivered on this the 23rd day of the month  
of October of the year 2017)

By order dated 02-09-2008, bearing No. 28/71/2002-LAB (Part)/1303, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to the Tribunal for adjudication.

"(1) Whether the action of the management of M/s Zuari Industries Limited, Jaikissan Bhawan, Zuarinagar, Goa in terminating the services of Shri R. G. Furtado, Senior Accounts Assistant, with effect from 2-11-2007, is legal and justified?

(2) If not, to what relief the workman is entitled?"



2. Upon receipt of the reference, it was registered as IT/31/08 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exhibit 6 and Party II filed a Written statement at Exhibit 9.

3. In short, the case of the Party I is that the Party I joined Zuari Industries Ltd. as a Government Apprentice on 1-6-1982 and was absorbed on the rolls of the company on 1-6-1983. He worked in Taxation department for more than 10 years and handled the job independently for approximately for 3 years and thereafter was asked to report to a Chartered Accountant and then he was transferred and was asked to handle the accounts of Provident Fund, Gratuity Fund and the Pension Fund and was subsequently transferred to Works account, where he worked till 2-11-2007, the date he was discharged. The Party I joined the Zuari Agro Chemicals Ltd. Workers' Union as an ordinary member as soon as he was confirmed as a permanent employee on 01-12-1983 and later became an executive member in 1989 and was involved in the negotiations and signed settlements dated 12-02-1991 and 22-06-1994 for the settlements periods 01-01-1990 to 31-12-1992 and 01-01-1993 to 31-12-1995 respectively and that he was elected as General Secretary of the Union in January 1999 and continues to be the General Secretary of the said Union.

4. The Party I was given the task of the filing of the cases Nos. LCC/44/98, IT/61/99, IT/62/99, IT/45/03, etc. on behalf of ZACLUWU in the Industrial Tribunal and is the main witness in the said cases and also handled various cases of unfair labour practices filed by the Union against the management of ZIL and represented the Union before the Dy. Labour Commissioner and Labour Commissioner and interacted with the advocates of the Union and briefed and prepared all the information required by them. The Party I along with the President, Vice President and Treasurer attended the cases in the Industrial Tribunal/High Court/Labour Department. The management refused to give the objection in writing and since the Party I was familiar with the cases, he suggested that he would attend courts by himself and never denied permission by the supervisors to attend the cases in the Tribunal/High Court or to meet the advocate.

5. During the stint in Taxation Department, the Party I was informed that the management wanted to promote him and it could not be done due to pressures from the Union and at that time, promotions for unionized staff was generally on

seniority basis. During the last few years, the offers for promotions were regularly made during the meetings with the Vice President-Personnel and Vice President-Finance. The Managing Director made offers for promotions on two occasions and that he, during a separate meeting, requested the Party I to accept a promotion stating that he deserved to be in the management cadre, however, as he was the General Secretary of the Union and the main witness in all the cases, he could consider a promotion only after all the issues pertaining to the Union were resolved. The Party I as an active member and General Secretary of the Union received numerous complaints from the members of the Union and raised the issues, on the instructions of the members, with the management. The Party I has been a long serving employee of Zuari Industries Limited and has discharged duties and work obligations diligently and dutifully throughout his stint with Zuari Industries Limited, in fact, he has been commended on numerous occasions with regard to the diligence in work duties.

6. However, on 2-11-2007, Party I was shocked to receive a letter terminating his services and discharging him from service for loss of confidence with immediate effect. The purported termination of the Party I is on false, frivolous and concocted grounds and in keeping with the illegal and malicious approach of ZIL towards members of Zuari Agro Chemicals Limited Workers' Union of which the Party I is a member and has been targeted and singled out in an attempt to compel the members of ZACLUWU to succumb to the arbitrary demands of ZIL. The termination of Party I is ex-facie patently bad-in-law and smacks of malafides and that he has been discharged from services without holding any inquiry as contemplated under the law. The said dismissal/discharge from service is in utter violation of principles of natural justice in as much as the Party I has been condemned unheard. No opportunity whatsoever was afforded to the Party I to answer/defend the charges leveled, which is contrary to the principles of Labour Law and spirit of industrial relations. On this count itself, the purported discharge of services as against the Party I stands vitiated and is liable to be set aside.

7. The Party I has been an active member of ZACLUWU, which is a Trade Union, registered under the Trade Unions Act. It is the Minority Union, which represents the workers in the Administrative Offices, whilst Zuari Agro Chemicals Limited Employees' Union represented the Workers in the technical categories. ZIL has practiced unfair

labour practices to wipe out the existence of the said Trade Union and members have been substantially reduced. The members of ZACLUWU, including the Party I has been subjected to discrimination and ill-treatment by ZIL. On account of the same, ZACLUWU has raised various disputes before the Authority and before the Industrial Tribunal/Labour Courts which are pending adjudication and has always stood up against the atrocities of ZIL and has made best efforts to secure the interest of ZACLUWU and exercised its rights as a Trade Union. The Party I has been exercising rights, as a member of the said Trade Union and ZIL has treated such exercise of rights, as being against the interest of ZIL.

8. It is also his case that ZIL in its letter of termination dated 2-11-2007 has alleged that the Party I left the work place during office hours and attended the Office of Inspectorate of Factories on 16-3-2007, 9-4-2007, 30-5-2007, 7-6-2007, 5-7-2007, 10-7-2007, 10-8-2007, 22-8-2007, 4-9-2007, 10-9-2007 and sought information under Right to Information Act against the interest of ZIL. It is further alleged by ZIL that the Party I has willfully colluded with Pratap Mardolkar and solicited information under Right to Information Act against the interest of the Company vide letters dated 15-6-2007, 19-6-2007 and 10-7-2007. It is further alleged that the Party I's action of conniving with Mr. Pratap Mardolkar and making allegations against the Company for alleged breach of the Factories Act is by way of retaliation against the company for furnishing information to Registrar that led to de-registration of the Union. It is further alleged in the said letter that the conduct of the Party I of being a party to false, vicious and malicious allegations is against the interest of the company and that the Party I left the workplace during working hours to engage in conspiracy against the company to project the company as a bad corporate citizen, however, the said allegations are baseless, false and concocted as whenever he left the office for Union work, he always took permission from his immediate seniors, even otherwise the same is the subject matter of inquiry and ZIL is not permitted in law to act in such a harsh, unilateral and arbitrary manner.

9. The Party I has also filed application dated 10-7-2007 which he is entitled to under Right to Information Act and does not in any way amount to bringing the company in disrepute. The Party I who is the General Secretary of ZACLUWU had sought information at the request and/or at the behest of the members of the said Union. The charge of collusion of Party I with Mr. Pratap Mardolkar as

to bring the company in disrepute is completely baseless. The allegations of collusion and anti management activities have to be inquired into by way of a properly instituted inquiry and Party II cannot unilaterally draw inferences and assume facts to discharge the Party I from service which is in complete contravention to the laws in force. The discharge of Party I from service by Party II is therefore bad-in-law and illegal and is based on frivolous considerations and inferences. The Party II has been practicing unfair labour practices on ZACLUWU of which Party I is a member. The Party II cannot terminate employment of long standing employee by leveling unsubstantiated allegations and tarnishing his image. The discharge of Party I from service is therefore vitiated and bad in law. The act of discharging Party I is out of personal vindication and vengeance against him. The termination of Party I by Party II vide letter dated 2-11-2007 is illegal and unjustified. Hence, the reference.

10. In the Written statement, the Party II has stated that the Party II is a company incorporated under the Companies Act, 1956 manufacturing fertilizers at its unit at Zuarinagar in Goa and that the Party I was employed with the Company as Senior Accounts Assistant in the Works account which deals with payments of various works undertaken in the factory and elsewhere and that the services of the Party I was discharged by a letter dated 02-11-2007 for loss of confidence. It has been reported that the Party I left the work place during the working hours and attended the office of the Inspectorate of Factories and on further investigation found that one Mr. Pratap Mardolkar had made an application dated 15-06-2007 under Right to Information Act seeking information in respect of the compliances of the Factories Act. Said Mr. Pratap Mardolkar by another letter dated 09-06-2007 alleged that the restrictive practices have been adopted in the company in violation of Factories Act and called upon the Factories Inspectorate to conduct enquiry into the issues mentioned above and also asked for a list of all the accidents that had occurred in the factory and called upon to invoke the provisions of the Factories Act.

11. The said letter was followed by another letter dated 10-07-2007 from Party I addressed to Public Information Officer, Inspectorate of Factories seeking the particulars of information that was requested by Pratap Mardolkar in the letters dated 15-06-2007, 19-06-2007, 28-06-2007 and 28-06-2007. Subsequently, Party I filed an appeal dated 26-09-2007 under RTI claiming therein information

furnished by Inspectorate of Factories in their response dated 12-07-2007, 06-08-2007 and 30-08-2007 is incomplete, misleading and vague. The Inspectorate of Factories by letter dated 10-07-2007 sought information pertaining to reportable accidents in the factory of the company. The Inspectorate of Factories by their letter dated 27-09-2007 sought the comments of the company regarding the number of workrooms, latrines, washrooms, etc. and vide letter dated 27-09-2007 sought the comments of the company regarding the incident of fire on 28-07-2007 and also by letter dated 05-10-2007, sought information regarding maintenance of register for recording the temperature in the workrooms.

12. Mr. Pratap Mardolkar is not the employee of the company. The Party I who is the employee of the company was an office bearer of ZACLWU, which now stands deregistered. The Party I as an employee could seek such information directly from the company, however the Party I chose not to do so and with a view to bring the company into disrepute mischievously and willfully colluded with Pratap Mardolkar and in such nefarious activities supplied him the information including the copy of internal notice/memo of 26-5-2000 signed by Vice President-Technical, Mr. Deelip Deshpande. The conduct of Party I of being a party to making false, vicious and malicious allegations against the company is against the interest of the company. The Party I left his place of work during working hours to engage in conspiracy against the company to project it as a bad corporate citizen. The management lost confidence in Party I and arrived at the conclusion that to retain the Party I in service is prejudicial to the interest of the company and therefore, the Party I was discharged from service for loss of confidence.

13. The Party I filed a rejoinder at Exhibit 10 denying the case put forth by Party II in the Written statement. It is stated that the Party II did not furnish to Party I any of the documents relied upon that led to the termination of Party I. The Party I was discharged from service without notice and without holding any inquiry which is a pre-requisite under clause 24 of Certified Standing Order of the company and the discharge of a workman must be in accordance with procedure prescribed in the relevant Standing Orders. The Party I has been attending to Union's matter since 1994 by taking permission of the supervisors. The Party I was never issued any warning or notice orally or in writing. The Party I was condemned unheard and the conclusion arrived at by the company is against principles of nature justice.

14. Issues came to be framed at Exhibit 11 are as follows:

- (1) Whether the Party I proves that the action of the Party II in termination his services w.e.f. 2-11-2007 is illegal and unjustified?"
- (2) What Relief?
- (3) What Award?

15. In the course of evidence, the Party I, Shri R. G. Furtado examined himself and produced on record his affidavit in evidence at Exb. 13, a copy of letter of discharge dated 2-11-07 at Exb. 14, a letter dated 28-6-07 along with other letters addressed to the Chief Inspectorate of Factories & Boilers by Pratap Mardolkar at Exb. 15 colly, a copy of notice dated 22-1-03 under Section 41-H of Factories Act at Exb. 16, a copy of complaint dated 19-06-2007 along with enclosures at Exb. 17 colly, a copy of Leave record card of Party I as on 30.09.07 at Exb. 18, a copy of letter dated 16.3.2007 representing Shri Pratap Mardolkar before PIO, the Chief Inspectorate of Factories & Boilers at Exb. 22, a copy of letter dated 21-2-2007 at Exb. 23, a copy of letter dated 21-2-2007 regarding information sought by Shri Pratap Mardolkar from PIO at Exb. 24, a copy of Proceeding sheets dated 30-5-2007 & 15-6-2007 at Exb. 25, a copy of letter dated 10-5-2007 issued to the Chief Inspectorate of Factories & Boilers at Exb. 26, a copy of Proceeding sheet of PIO dated 10-8-2007 at Exb. 27, a copy of letter dated 28-6-2007 at Exb. 28 and copies of various correspondences at Exb. 32 colly.

16. On the other hand, Party II examined its Manager-HR and IR, Shri Nikesh Doure as witness and he produced on record affidavit in evidence at Exb. 34, copies of 15 letters addressed to PIO/received by Shri Pratap Mardolkar at Exb. 35 colly, copies of proceedings before Inspectorate of Factories & Boilers at Exb. 36 colly, copies of letters dated 10-7-2007 and 26-9-2007 addressed to PIO at Exb. 37 colly, copies of authorization letters dated 21-2-2007 and 5-7-2007 at Exb. 38 colly, copies of attendance record along with leave card at Exb. 39 colly, copies of letters dated 22-10-97, 24-10-97, 20-10-97 & 20-10-97 at Exb. 40 colly, copy of authority letter along with resolution of the Board of Zuari Global Ltd., at Exb. 41 colly, a copy of Resolution passed at the meeting of the Board of Directors of the company held on dated 19-05-2017 at Exb. 43, a copy of Certified Standing Orders at Exb. 46 and the copies of RTI Applications at Exb. 48 colly.

17. Heard arguments. Notes of written arguments came to be placed on record by the parties.



18. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the issues along with their findings and reasons thereof are as follows.

1. Issue No. 1 ... In the Affirmative.
2. Issue Nos. 2 & 3 ... As per final order.

#### REASONS

##### *Issue No. 1:*

19. The Party I, Shri R. G. Furtado has submitted that Clause 24 (1)(e) of Certified Standing Orders refers to discharge from service or payment in lieu of notice and clause 24(iv) pertains to holding of an enquiry. No domestic enquiry was made by Party II before proceeding to dismiss the Party I. The discharge of Party I was not only illegal but not in compliant with provisions of Section 33 of Industrial Disputes Act, 1947 which attracts the penal provisions of Section 31(1) of the Act. The action of the company is illegal and the company knowing that it was breaking the law went ahead with the discharge of Party I, which establishes victimization and unfair labour practices. The ground of loss of confidence given by Party II for discharge of Party I workman was only as a reason to get over the difficulty of not being able to prove the guilt of the Party I, if departmental enquiry was held. He further submitted that when an enquiry has not been held and the procedural safeguards have not been followed in cases of workmen who are governed by industrial laws, it is settled that the order cannot be justified even in the course of adjudication before the appropriate Tribunal and in support thereof, he relied upon the case of **Ramprasad Ambaram Verma vs President, Industrial Court, (1991) II LLJ 488 MP**.

20. Per contra, Ld. Adv. Shri G. K. Sardessai for Party II relying upon the case of **Workmen of Motipur Sugar Factory (Private), Ltd. vs. Motipur Sugar Factory (Private) Ltd., 1965 II LLJ 162**, has submitted that it is now well-settled by a number of decisions of the Hon'ble Apex Court that where an employer has failed to make an enquiry before dismissing or discharging a workman, it is open to him to justify the action before the Tribunal by leading all relevant evidence before it. In such a case, the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be opened before the Tribunal which will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the

dismissal or discharge was justified. The employer thus, has got a right to adduce evidence before the Tribunal justifying its action, even where no domestic inquiry whatsoever has been held.

21. Ld. Adv. Shri G. K. Sardessai for Party II has further submitted that the charges against the Party I workman are also misconducts under Certified Standing Orders of the company. Misconducts are initially spelt out in the Certified Standing Orders of the company; however the misconducts under Service regulations or Model Standing Orders or under the Certified Standing Orders are invariably not exhaustive but are illustrative. This principle is reiterated in clause 22 of Certified Standing Orders which enumerates the various acts of an employee which can be treated as misconducts. The acts of the Party I constitute misconducts including acting prejudicial to the interest of the company; failure to perform his duties during working hours; taking leave on false pretext; leaving office during working hours on false pretext, for which the Party I has been discharged from service for loss of confidence.

22. There is no dispute that the Party I was discharged without holding an enquiry nor Party I was warned or informed about the allegations made in the letter of discharge. No explanation whatsoever was sought by Party II from Party I on the allegations made in the said letter of discharge. A little peep into clause 24(III) of the Certified Standing Orders at Exb. 46 reveals that no order of withholding increments or suspension under sub-clause (c) and (d) respectively of clause (I) and of discharge/dismissal under sub-clause (e) and (f) of clause (I) shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct in the manner set forth in sub-clause (IV). The Certified Standing Orders applicable to the parties implies a contract between the company and the workmen. Clause 22 of the Certified Standing Orders pertains to acts of misconduct. There is no provision in the Certified Standing Orders of the company to terminate the services of the workmen by way of discharge without holding an enquiry. The charges mentioned in the chargesheet are acts of misconduct under clause 22 of Certified Standing Orders, which establishes that the discharge of Party I was not due to loss of confidence as claimed by the company but due to misconducts spelt out in clause 22 of the Certified Standing Orders and therefore, as rightly submitted by Party I, an enquiry was mandatory. The discharge order is therefore contrary to the Certified Standing Orders applicable to the parties.



23. It is also well settled that an employer has to conduct an enquiry as per Standing Orders. No domestic enquiry was made before proceeding to discharge Party I. It requires no mention that when the enquiry has not been held and procedural safeguards have not been followed, no order of termination could be justified and therefore the decision of the employer to discharge Party I without the enquiry cannot be countenanced. The Party II was also not in a position to satisfy the Court that holding the enquiry will be either counterproductive or may cause such irreparable and irreversible damage before inflicting the punishment as denial of livelihood and casting of stigma without giving opportunity to the employee to controvert the allegations and without letting him to know what is his misconduct is against the principles of natural justice and fair play. The employer has therefore not justified its action before the Court overlooking the mandatory provision of holding an enquiry. It is therefore on the above count alone, the discharge deserves to be set aside.

24. There is no dispute that the management has a right to adduce evidence before the Tribunal justifying its action, even when no domestic enquiry whatsoever has been held, however the question is whether Party II has proved the allegations before the Tribunal for discharge of the workman for alleged loss of confidence and one cannot find any reasonable answer to it. Shri R. G. Furtado, Party I has submitted that his discharge by letter dated 2-11-2007 for loss of confidence was without any enquiry as required under the clauses of Certified Standing Orders applicable to the company and therefore was deprived of his right of being heard which was available to him under the Certified Standing Orders, so also that he was not warned or informed about the allegations made in the letter of discharge. No explanation of whatsoever nature was sought by Party II. The burden of proof to show the misconduct is always on the management and the burden cannot be shifted upon the worker to prove that there is no misconduct. The termination order is contrary to Certified Standing Orders of the company.

25. On the converse, Ld. Adv. Shri G. K. Sardessai for Party II has submitted that the Party I has been terminated for loss of confidence as stated so at para 13 of letter of termination. He further submitted relying upon the case of **The Binny Ltd. vs. Their Workmen, 1973 LAB. I. C. 1119**, that the Party I was doing the work against the interest of the company by filing RTI applications and attending the Factory Inspectorate. The conduct of Party I of

being a party to making false, mischievous and malicious allegations against the company is against the interest of the company as it is a primary obligation of Party I to protect the interest of the company. The Party I has admitted that he was attending various cases of unfair labour practices filed by the Union against the management. The Party I sought information from Inspectorate of Factories regarding notice by occupier, notice under Section 41-H, reportable accidents and safety in factory by way of various RTI applications. He further submitted relying upon the case of **Mohd. Shakeel Saifi vs. PIO Bhai Paramanand Institute of Business Studies, Delhi, CIC/SA/A/2015/002028**, that if the frivolous RTI applications from its own employees targeting the superior officers or the management are only meant for harassing other employees or public authority as a whole, then the disciplinary action should be initiated for such alleged misconduct leading to appropriate action for irresponsible misuse of the right under RTI Act.

26. The undisputed facts are that Party I was the General Secretary of the registered Union operating in the company and that he was discharged by letter dated 2-11-2007 for alleged loss of confidence without any enquiry being held as required under the clauses of Certified Standing Orders applicable to the company. The charges against the Party I as per the chargesheet in short were (a) that he left the work place during working hours and attended the office of Inspectorate of Factories on 16-3-2007, 9-4-2007, 30-5-2007, 7-6-2007, 5-7-2007, 10-7-2007, 10-8-2007, 22-8-2007, 4-9-2007, 10-9-2007; (b) that one Mr. Pratap Mardolkar has made an application dated June 15, 2007 under Right to Information Act seeking information in respect of the compliances of the Factories Act, 1948; (c) that the Party I was conniving with Mr. Mardolkar in making false allegations against the company for alleged breach of Factories Act; and (d) making false, mischievous allegations against the company and was divulging information to the outsiders, thus working against the interest of the company.

27. It is well settled that in the cases involving loss of confidence what must be pleaded and proved is that (i) the workman is holding a position of trust and confidence (ii) by abusing such a position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse re-instatement on ground of loss of confidence. Loss of confidence cannot be

subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost as held by the Apex Court in the case of **Kanhaiyalal Agrawal & Ors. vs The Factory Manager, Gwalior Sugar Company Limited, in Appeal (Civil) 6878-6880 of 1999 passed on 13-09-2001.**

28. The Hon'ble Apex Court in the case of **L. Michael & Anr. vs. M/s. Johnston Pumps India Ltd, 1975 SCR(3)489**, also held that an employer who believes or suspects that his employee, particularly an one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. The Apex Court added that such belief or suspicion of the employer should not be a mere whim or fancy. The Tribunal has the power and indeed, the duty to X-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But, if the management, to cover up the inability to establish by an inquiry, illegitimately but ingeniously passes an innocent looking order of termination simpliciter, such action is bad and is liable to be set aside.

29. From the above citations, it is manifestly clear that loss of confidence cannot be merely subjective based upon the state of mind of the management, but objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthy of the employee which must be alleged and proved, otherwise the right of reinstatement to which an employee is ordinarily entitled to on a finding that he is not guilty of any misconduct will be irretrievably lost to the employees. The management therefore must plead and prove in order to invoke the principle of loss of confidence in the employee that (i) the workmen is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. The question is whether the management can lose confidence in one of its employees merely on the

basis of filing RTI applications before appropriate forum under Factories Act for betterment of their service conditions and the answer cannot be in the affirmative.

30. The Party I has examined himself and has stated that he handled various cases of unfair labour practices filed by the Union against the Party II and that he attended the cases before various authorities after taking permission from immediate supervisors. He also claimed that he was never denied any permission to attend the Tribunal, etc. He claimed that as an active member and General Secretary of the Union, he received numerous complaints of the union members ranging from financial irregularities by the management to discrimination in salaries and safety matters. There cannot be any dispute that deregistration of the Union was set aside and the company is in appeal before Hon'ble High Court. The management signed separate settlements with each of the Unions but refused to negotiate with them. He stated that he always stood up against the atrocities of ZIL and had made best efforts to secure the interest of the Union, however on 2-11-2007, he was shocked to receive letter terminating his services for alleged loss of confidence. The said dismissal is in violation of principles of natural justice and not in accordance with procedure prescribed in Certified Standing Orders nor was he afforded any opportunity to answer/defend the charges levelled against him. The termination letter smacks of malafides and unfair labour practices.

31. The Party I in the cross examination has admitted that he attended the office of Inspectorate of Factories on various dates which according to Party II was without permission, however he claimed that he obtained permission from his supervisors. No warning or show cause notice was issued to him, to the contrary. Shri Nikesh Doure who has been examined on behalf of Party II has admitted that the Party II did not warn or inform Party I about attending personal work without permission. The Party II could have examined their officials to prove that Party I never took their permission. The Party II has also not examined the official who has filed the written statement viz. Shri R. Y. Patil, General Manager, Legal Affairs and Company Secretary who denied that the Party I had taken permission of immediate supervisor and therefore an adverse inference has to be drawn that the absence of Party I was with the permission of the immediate supervisors as stated in the rejoinder to the written statement

where he claimed that he followed the procedure of informing his supervisors while leaving office to attend the courts since the year 1994 and that he was never issued a warning or notice either orally or in writing.

32. Mr. Nikesh Doure, in the cross examination had volunteered to produce the written correspondence by Union members to attend court proceedings or conciliation proceedings prior to 2007, if available, which he ultimately not produced. He, however has admitted that there is nothing in writing available with the company that Party I was out of office without any authorised approval. The Party II is therefore unable to show that the explanation offered by Party I was not true on the basis of documents in their possession. He also admitted that he did not meet Mr. R. Y. Patil on the subject matter of the case, however thereafter he deposed that Shri R. Y. Patil informed him that Party I did not take permission from supervisor, which statement is clearly an improvement to the previous statement and therefore the credibility of the witness is a suspect, moreover he was not present at the time when the alleged incident occurred as admittedly Shri Nikesh Doure who was working as Manager-HR and IR joined the company on 7-1-2014, more than six years after Party I was discharged and therefore, he had no personal knowledge of the case. The Party II therefore failed to prove the above allegation of absence without permission.

33. Shri Nikesh Doure has also admitted that Mr. Pratap Mardolkar is a leader of Union operating in Zuari Agro Chemicals Ltd. Exhibit 32 colly are the list of RTI applications which were admittedly filed after termination of Party I. Exhibit 35 colly are the letters to Public Information Officer by Pratap Mardolkar, Exb. 36 colly are the proceedings before the Inspectorate of Factories, Exhibit 37 colly are the letters addressed to PIO, by Party I and Exb. 48 colly are the proceedings before the Inspectorate of Factories, however none of the documents mentioned above show that Party I made false, vicious and malicious allegations against the Party II or that Party I was working against the interest of the company by filing RTI applications. There is nothing on record that the Party I was holding a responsible post or position of confidence or that he betrayed the confidence reposed in him by the company. The Party II has not produced any evidence to that effect and that he made false allegations against the company. The reliance placed on the case of **The Binny Ltd.** (supra) is not applicable as the management has

not shown that Party I was confronted with any allegation of wrong doing or that he had disobeyed any order of management, unlike the said case and therefore, it cannot come to the aid of Party II.

34. Mr. Nikesh Doure had admitted that the letters at Exb. 35 colly are not complaints and that they are RTI applications only. There cannot be any dispute that the RTI Act, 2005 mandates timely response to citizen's request for Government information. The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption and make the democracy work for the people in the real sense. There is nothing on record that the Party I misused the RTI Act by making false, vicious and malicious allegations. There is also no dispute that the Party I is the General Secretary of the Union and was taking up issues relating to unfair labour practices with the appropriate authorities including Inspectorate of Factories. The Factories Act, 1948 was enacted with the object of protecting workers employed in factories against industrial and occupational hazards and the Party I being General Secretary of the Union has every right to seek information with regard to the implementation of the Factories Act for the benefit of the workmen.

35. The Party II has referred to a letter dated 19-6-2007 at Exb. 35 colly written by Mr. Mardolkar to the Chief Inspectorate of Factories and Boilers in which an enquiry was sought by him on some issues particularly on restricted practices adopted by the company in violation of the Factories Act, 1948 and whether the company did not willfully report accidents as required under Section 88A of the Factories Act to show that both Mr. Mardolkar and Party I in collusion with each other conspired against the interest of the company. However, a little peep into the said letter dated 19-6-2007 shows that Mr. Mardolkar had referred to letter dated 1-4-2003 addressed by Zuari Industries Ltd. to Chief Inspectorate of Factories and Boilers, in response to the notice dated 22-1-2003 by Zuari Agro Chemical Ltd. Workers' Union which was obtained under RTI. The letter written by Mr. Mardolkar was on the basis of information that he received under RTI Act and that Mr. Mardolkar got access to the letter dated 22-1-2003 which contained memo dated 26-5-2000 at Exb. 16. All the documents referred in the letter of discharge and the affidavit of Mr. Nikesh Doure was in possession of Inspectorate of Factories and Boilers which information was accessible to any person being public document. It therefore shows that Party II made false allegations against Party I to target him being General Secretary of the Union.

36. The Party II produced complaints/letters at Exb. 35 colly. written by General Secretary, Zuari Agro Chemicals Ltd. Employees Union addressed to Gen. Manager-Manufacturing of the company and the copies were marked to the Inspectorate of Factories and Boilers and Dy. Labour Commissioner, Margao. The said complaints related to inadequate manpower in the plants, non working of the dehumidifier, unsafe working of NPK Plant, working in excess of the statutory rules under the Factories Act, 1948 and bypass of the safety trip systems valves in the ammonia and bypassing safety trip system which are serious violations which can result in accidents and cause casualties among the workmen. The said complaints were not addressed by Party I Union or by Party I. The above documents suggest that the General Secretary of the other majority Union made serious allegations against the functioning of the company with the Inspectorate of Factories and Boilers and the Labour Commissioner.

37. Admittedly, the company has not taken any action against the said Union for leveling serious allegations against them, on the contrary it has been falsely alleged by Party II that the Party I provided information to Mr. Mardolkar which information was within the reach of the authorities and the company. There is no dispute that the said information was requested by Party I under RTI Act. No opportunity was granted to Party I to show that the documents at Exb. 35 colly. which the company alleged was provided to Mr. Mardolkar was in the possession of the Inspectorate of Factories and Boilers and that Mr. Mardolkar had obtained it under the RTI Act. Mr. Mardolkar may not be the employee of the company, but was the leader of Contract Labour Union and therefore involved with the contract labour operating in the company and exercised his right to seek information under the RTI Act and was interested in the working of the company and its compliance with the Factories Act. No information pertaining to the working of the company has been sought for by the Party I. The information sought by Party I and Mr. Mardolkar was also under the control of Inspectorate of Factories and Boilers.

38. There is also no dispute that the Party I on behalf of the Union issued a notice to Party II under Section 41-H of the Factories Act dated 22-1-2003 warning of imminent danger in the factory as per Exb. 16 and copy of which was addressed to Inspectorate of Factories and Boilers and other authorities in terms of law. The Party I in the said letter at Exb. 16 alleged that the members of the other Union adopted pressure tactics and sabotage

to deter the company from implementing normal work practices and referred to and attached a notice dated 26-5-2000 signed by Vice President-Technical alleging acts of sabotage in the plant. It is the case of Party II that Party I supplied to Mr. Mardolkar the information including the internal notice/memo dated 26-5-2000 signed by the Vice President-Technical at Exb. 17 colly(3). However, the fact that the memo dated 26-5-2000 was attached to the notice under Section 41-H dated 22-1-2003 at Exb. 16, copy of which was sent to Inspectorate of Factories and Boilers establishes that the said memo was in possession of Inspectorate of Factories and Boilers since 22-1-2003 and being a public document, could be obtained by any person.

39. Shri Nikesh Doure has admitted that the company received the letter dated 22-1-2003 at Exb. 16 addressed by Party I on behalf of the Union. The Vice President-Technical in the said memo clearly stated that the plant is complex chemical factory with many sensitive equipments working under temperature, pressure and corrosive conditions and that subversive acts mentioned in the notice at Exb. 16 were detected in time and damage to plant and equipment could be prevented. The said issue should be mandatorily reported to the Inspectorate of Factories and Boilers, which company did not do. No action was initiated by Inspectorate of Factories and Boilers against the company when they came in the possession of the said information. The incident could have caused a blast in the factory and harmed the employees. The company instead of taking action against the said persons for the acts of sabotage, unilaterally discharged the Party I without any enquiry on the specious plea of giving the memo to the outsider. The company did not bother to reply to the notice of Party I dated 22-1-2003 at Exb. 16, which shows that the company does not share the information in its custody to its employees, contrary to the claim made by the company that no information was sought by Party I from them.

40. The Inspectorate of Factories and Boilers also did not reply to the Union, although the company replied to the notice to the Inspectorate vide letter dated 1-4-2003. Mr. Mardolkar not only obtained notice under Section 41-H dated 22-1-2003 under RTI Act but also obtained a reply of the company dated 1-4-2003 sent to the Inspectorate of Factories and Boilers, which shows that the Party I has not provided any information to Mr. Mardolkar and that Mr. Mardolkar had obtained the documents from the Inspectorate of Factories and Boilers.



Importantly, the company did not refer to the notice under Section 41-H of the Factories Act at Exb. 16 in the letter of discharge or in the affidavit of the witness, Mr. Doure along with the reply of the company dated 1-4-2003, though copy of documents were produced at Exb. 35 colly. and the said documents along with the letter of Mr. Mardolkar dated 19-6-2007 clearly establish that all the information were obtained by Mr. Mardolkar under RTI Act and that Party I was not responsible for supplying the said information to the alleged outsider, Shri Mardolkar, who is the Contract union leader in the company. Shri Nikesh Doure has also admitted that he knows Mr. Mardolkar since 2014 based on the settlements, he signed on behalf of the contract labour being leader of contract labour union. It is thus clear that the Party II has failed to prove any collusion of Party I with said Mr. Mardolkar or that both have acted against the interest of the company.

41. The allegation of collusion and anti-management activities were required to be proved by setting up a properly instituted enquiry, which has not been done by the management. The termination is therefore illegal and unjustified. The charges mentioned in the letter of discharge therefore cannot stand. The allegations by the management in the chargesheet stating that he colluded with Pratap Mardolkar of seeking information under RTI Act and making allegations against the company are baseless. In any event, the said RTI applications cannot be termed as complaints or cannot be said that the Party I was working against the interest of the company. The documents at Exb. 35 colly. were made as basis for discharge of Party I on alleged loss of confidence without any evidence or enquiry into the matter, which clearly discloses that the company took a conscious decision to remove Party I from the service without following principles of natural justice and fair play and was ready to face legal consequences arising out of the discharge.

42. There is no dispute that the past conduct of the Party I was blemishless, unsoiled and clean as there was no enquiry or charges against him. The management has not shown any bad conduct on the part of Party I during the period of service of 25 years rendered by him with Party II. The documents at Exb. 35 colly. are all RTI applications and they are not the complaints against the company. Shri Doure has also admitted that the documents at Exh. 35 colly which are made basis for discharge of the Party I from service are RTI applications only. It is not explained as to how seeking information under Right to Information Act

can bring the company into disrepute. The reliance placed by Ld. Adv. Shri Sardessai for Party II on the case of **Mohd. Shakeel Saifi** (supra) is not at all applicable to the case at hand as in that case it was alleged that the applicant was seeking wide range of information about colleagues, principal and officers who were supposed to inquire into the complaint filed against him and that he also videographed the lectures of the teacher in the classroom without permission and put it on social media, unlike the present case.

43. The Party II is therefore guilty of unfairness and victimization in discharging the Party I under colourable exercise of employers' right by falsely implicating the Party I on patently concocted reasons in utter disregard of the principles of natural justice and fair play for a misconduct which has not been proved and punished him without having any regard to the past record or service of Party I who worked diligently with the Party II from 1-6-82 till date of discharge on 2-11-2007 for nearly 25 years and hence, the termination of the Party I who was the General Secretary of the Union for alleged loss of confidence without holding an enquiry and affording him reasonable opportunity to defend himself is required to be set aside as the Party II was unable to show that the Party I was holding a position of trust and confidence and by abusing such a position, he committed acts of misconduct and to continue him in service would be embarrassing and inconvenient or would be detrimental to the discipline or security of the establishment.

44. The discharge of Party I is punitive and casts a stigma on Party I which cannot be sustained in the absence of full scale departmental enquiry which has not been conducted by Party II and the Party I was discharged without affording an opportunity of being heard of the allegations of misconducts leveled against him in the chargesheet. The Party I was only exercising his rights as General Secretary of the Union, albeit minority, with regard to safety and other issues and therefore discharging him from service on the ground of alleged loss of confidence is unwarranted. The allegation of Party II that Party I was conniving with Mr. Mardolkar and making false, vicious and malicious allegations against the company and divulged information to the outsiders and thus was working against the interest of the company remained unproved. The Party I having established that the action of Party II in terminating his service w.e.f. 2-11-2007 is illegal and unjustified, the above issue No. 1 is answered in the affirmative.

Issues Nos. 2 & 3:

45. Ld. Adv. Shri G. K. Sardesai for Party II has submitted that Party I neither in the claim statement nor in the affidavit in evidence contended that he is not gainfully employed or that he made efforts to secure gainful employment. The Party I has thus neither pleaded nor deposed on the aspect of gainful employment nor led any evidence in support thereof and therefore did not discharge the initial burden cast on him. He further submitted that it is well settled that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. Ld. Adv. Shri Sardesai relying upon the case of **U. P. State Brassware Corpn. Ltd. and Another vs Uday Narain Pandey, (2006) 1 SCC 479**, has submitted that a person is not entitled to get something only because it would be lawful to do so. The concept of discretion is inbuilt in such exercise. The Court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case and applying the said principle, the Party I is not entitled to back wages as he has not shown that he has not been gainfully employed as the initial burden was on him, which he has not discharged nor entitled for re-instatement as he has crossed the age of superannuation.

46. Per contra, the Party I has submitted that there is a gross delay in disposing the matter mainly due to frequent adjournments requested by the company and frivolous and unnecessary applications filed on behalf of the company while adjudicating the matter which resulted in loss of time, money and inconvenience to Party I and also giving up the services of the Advocate as he could not afford the cost. The management has thus seen to have been taking steps periodically to see that the dispute is not disposed at an early date on one ground or other as the management was fully well aware that the dice is always loaded in their favour, since even if they lose the frivolous applications, the time gain is the real gain as the witness of the management was examined after almost ten years. He further submitted that he was discharged at the age of 50 years and he reached the age of superannuation two years ago during the course of proceedings. He further submitted that the Party I has sought full back wages in the statement of claim as well as in the affidavit in evidence, which would imply that he was not gainfully employed and therefore, the above contention of Adv. for Party II be discarded.

47. It is an admitted fact that the claim statement has been filed by Party I on 11-12-08 and affidavit in evidence was filed on 8-7-2009. The Party I in the claim statement sought re-instatement with full back wages. There also cannot be any dispute that full back wages can be sought only if the workman is not gainfully employed. The Party II has also not rebutted the claim of Party I that he is not gainfully employed nor it is claimed by them in the written statement that after he was discharged on the ground of loss of confidence, he was gainfully employed. No doubt, Party I has not stated in the claim statement that he was not gainfully employed or that he made efforts to secure gainful employment, however, the Industrial Disputes Act being a beneficial legislation and that the Party I has clearly sought re-instatement along with full back wages, it has to be presumed that the Party I was not gainfully employed. In any event, there is no evidence to the contrary. It is therefore the above contention of Ld. Adv. Shri G. K. Sardesai that Party I is not entitled for full back wages cannot be accepted.

48. The Party I has alleged and sufficiently shown that the management has delayed the proceedings on one ground or another with frivolous defences and has eventually failed to justify its action of discharge of the workman and had taken shelter of falsehood, misrepresentation and suppression of facts for achieving their goals. In the case of **Padmavati and Ors. Vs. Harijan Sewak Sangh, 154 (2008) DLT 411**, it is observed by the Hon'ble Apex Court as follows:

*That the case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aims of every judicial system has to be discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person and that one of*

*the reasons for over-flowing of Court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even, if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.....*

49. It is also well settled by the Hon'ble Apex Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors., 2014 II CLR 813**, that in a case of wrongful termination of service, re-instatement with continuity of service and back wages is the normal rule. The Apex Court in Para 17 has observed thus:

*17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food*

*and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The re-instatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer, would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.*

50. Needless to mention, the Party I was 50 years old when he was discharged from service and that he has attained the age of superannuation of 58 years on 31-12-2015. The Party I has been prosecuting the dispute since last 9 years. There is no question of re-instatement as he has already crossed the age of superannuation in 2015. It is also difficult to Party I to find a suitable job at this age, more so because of the stigma attached to the discharge. It is also a matter of record that the delay in proceedings the matter is mainly due to unnecessary applications and frequent adjournment sought by the company. The affidavit of witness of Party II was filed only on 25-1-2017. The management has seen that the dispute was not disposed of at an early date, one way or the other. The delay is primarily on account of Party II. The Party II has inflicted a grossly monstrous and illegal punishment without following the terms and conditions of the employment. The Party I has suffered great mental agony and financial loss due to the illegal discharge from service by Party II.

51. There is no dispute that the Party I was working with Party II for 25 years before his discharge with clean record. The Party I has been prosecuting his claim before the Tribunal since 2008 after his discharge by Party II and has been fighting the litigation since last 9 years and therefore is entitled for reasonable amount of

Rs. 2,00,000/- (Rupees Two lakhs only) towards cost of litigation so also towards pain and agony which he suffered for no fault of his. It is well settled law that in cases of wrongful discharge reinstatement with continuity in service and back wages is normal rule, however, the Party I is not entitled for re-instatement as he has already completed 58 years of age in the year 2015. Nonetheless, he is entitled for full back wages for the period from the date of discharge till superannuation alongwith interest @ 18% p.a. on account of inflation from 2007 onwards and benefits of all the settlements considering the facts and circumstances of above. There is nothing on record that the Party II is running into losses, on the contrary the Party II is a dividend paying company in the business of trading pesticides and compact fertilizers and that the company is cash rich and has the capacity to pay. Hence, the above the issues are answered accordingly.

52. In the result, I pass the following:

#### ORDER

- i. The dispute referred by the appropriate Government by way of above reference under Section 10(1)(d) of the Industrial Disputes Act is answered in favour of Party I.
- ii. It is hereby held that the action of the management of M/s Zuari Industries Limited, Jaikissan Bhawan, Zuarinagar, Goa in terminating the services of Shri R. G. Furtado, Senior Accounts Assistant, with effect from 2-11-2007, is illegal and unjustified.
- iii. The Party II is directed to pay to Party I, Shri R. G. Furtado, full back wages for the period from the date of discharge till superannuation along with interest @ 18% p. a. and consequential benefits attached to the post, as well as benefits of all the settlements with costs of Rs. 2,00,000/- (Rupees two lakhs only).
- iv. The Party II is directed to deposit back wages before the Tribunal as stated above within 60 days of the publication of the Award, failing which the Party II shall pay an interest @ 9% per annum.
- v. Inform the Government accordingly.

Sd/-  
(Vincent D'Silva),  
Presiding Officer,  
Industrial Tribunal and  
Labour Court.

#### Notification

No. 28/9/2017-LAB/Part-I/796

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 12-10-2017 in reference No. IT/08/02 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Georgina Saldanha, Under Secretary (Labour).

Porvorim, 20th November, 2017.

IN THE INDUSTRIAL TRIBUNAL  
AND LABOUR COURT  
GOVERNMENT OF GOA  
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding  
Officer)

Ref. No. IT/08/02

Workmen,  
Rep. by the President,  
Goa Trade & Commercial  
Workers' Union,  
Velhos' Building, 2nd Floor,  
Panaji, Goa. ... Workmen/Party I

V/s

The Managing Director,  
M/s. Jaybee Laminations Ltd.,  
Kundaim Industrial Estate,  
Kundaim-Ponda, Goa. ... Employer/Party II

Workmen/Party I represented by Ld. Adv.  
Shri Suhaas Naik.

Employer/Party II represented by Ld. Adv.  
Mrs. Harsha Naik.

#### AWARD

(Delivered on this the 12th day of the month  
of October of the year 2017)

By Order dated 07-02-2002, bearing No. 28/22/2001-LAB, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to the Tribunal for adjudication.

"(1) Whether the action of the management of M/s Jaybee Laminations Ltd., Kundaim, in terminating the services of 77 workmen, as listed in the Annexure hereto, with effect from 26-3-2001, is legal and justified?



## ANNEXURE

Sr. No.	Name of the worker	Date of joining	Designation
1	2	3	4
1.	Anil Singh	09-06-1995	Jr. Operator (Shearing M/c)
2.	Ashok Kumar Prasad	08-03-1994	Jr. Operator (Shearing M/c)
3.	Dilip Kumar Gupta	05-07-1992	Operator (Press-opr.)
4.	Govind Kumar Roy	02-02-1992	Operator (Press-opr.)
5.	Jagdish Prasad	17-06-1994	Operator (Shearing M/c)
6.	Jayprakash Yadav	01-08-1994	Operator (Slitting Opr.)
7.	Mastaram	10-05-1995	Jr. Operator (Shearing Opr.)
8.	Ram Sunder Yadav	01-12-1991	Operator (Press-Opr.)
9.	Ranveer Singh	10-05-1995	Jr. Operator (Shearing M/c)
10.	Suryanarayan Yadav	20-08-1995	Helper
11.	Sushil Kumar	01-07-1994	Welder (All Rounder)
12.	Wahab Ahmed	07-04-1995	Jr. Operator (Stilting M/c)
13.	Kedarnath Roy	01-12-1992	Supervisor
14.	Rabindranath Tiwari	01-04-1995	Helper
15.	Upender Yadav	01-04-1995	Packing Sup.
16.	Upender Prasad	17-06-1994	Operator (Shearing M/c)
17.	Navin Paswan	17-06-1994	Operator (Shearing M/c)
18.	Dinesh Kumar	17-05-1994	Operator (Shearing M/c)
19.	Ramsevak Yadav	05-02-1992	Operator (Stilting M/c)
20.	Kashikant Jha	10-10-1996	Operator (Core)
21.	Sunil Thakur	01-07-1994	Jr. Operator (Stilting M/c)
22.	Diwan Kohli	01-10-1991	Operator (Press-Opr.)
23.	Harendar Singh	01-04-1995	Operator (Shearing M/c)
24.	Tejveer Singh	01-10-1992	Electrician
25.	Vinod Kumar	01-07-1994	Operator (Shearing M/c)
26.	Shambhu Gupta	01-04-1995	Helper
27.	Mayaram	01-04-1995	Helper
28.	Upendar Yadav	15-06-1994	Operator (Press-Opr.)
29.	Narendar Singh	01-07-1995	Jr. Operator (Press-Opr.)
30.	Sunil Singh	01-10-1991	Operator (Press-Opr.)
31.	Ravindar Prasad	01-07-1994	Jr. Operator (Press-Opr.)
32.	Ravinkumar Roy	21-04-1994	Jr. Operator (Press-Opr.)
33.	Anil Kumar Roy	24-05-1993	Jr. Operator (Shearing M/c)
34.	Mangaldas Gaude	01-08-1996	Jr. Operator (Shearing M/c)
35.	Ramesh Gaunekar	01-08-1996	Jr. Operator (Shearing M/c)
36.	Bharat Volvoikar	01-08-1996	Helper
37.	Nandkishor Kari	01-08-1996	Jr. Operator (Tool Room)
38.	Cholu Gaude	23-08-1996	Helper
39.	Martand Parab	02-09-1996	Helper (Tool Room)
40.	Sunil Shirgaonkar	02-09-1996	Electrician
41.	Jayesh Bhomkar	03-09-1996	Packing Sup.
42.	Shrikant Salgaonkar	01-11-1996	Jr. Operator (Shearing M/c)
43.	Uday Parab	22-01-1997	Carpenter (Packing)
44.	Rajesh Satarkar	01-01-1997	Jr. Operator (Shearing M/c)
45.	Santosh Gaude	02-05-1997	Helper
46.	Sunil Naik	02-05-1997	Jr. Operator (Shearing M/c)
47.	Suresh Sawant	02-05-1997	Furnace Sup.
48.	Yoganand Naik	13-05-1997	Jr. Operator (Shearing M/c)
49.	Lala Satarkar	21-05-1997	Jr. Operator (Shearing M/c)
50.	Narayan Jalmi	24-05-1997	Helper

1	2	3	4
51.	Sushen Chodankar	27-05-1997	Helper
52.	Devidas Gaude	05-06-1997	Helper
53.	Tinesh Khedekar	05-06-1997	Jr. Operator (Shearing M/c)
54.	Ravindra Sawant	16-06-1997	Helper
55.	Anand Shirodkar	17-06-1997	Helper
56.	Lelendra Phadte	01-07-1997	Jr. Operator (Shearing M/c)
57.	Shailesh Phadte	18-07-1997	Helper
58.	Vimal Kumar Yadav	01-08-1998	Helper
59.	Mahesh Naik	01-08-1997	Jr. Operator (Shearing M/c)
60.	Pusha Naik	01-11-1996	Sweeper
61.	Geeta Naik	01-11-1996	Sweeper
62.	Suman Naik	—	Sweeper
63.	Manoj Singh	—	Helper
64.	Premanand Gaude	28-07-1997	Helper
65.	Ladu Madkaikar	22-08-1997	Furnace Sup.
66.	Anand Naik	28-07-1997	Attendant
67.	Umesh Jalmi	24-09-1997	Welder
68.	Rajendra Shet	01-10-1997	Welder
69.	Anand Gaude	01-10-1997	Helper
70.	Shrikant Naik	03-10-1997	Helper
71.	Uttam Kerkar	06-10-1997	Helper
72.	Pradip Naik	08-10-1997	Carpenter
73.	Anand Narvekar	10-10-1997	Carpenter
74.	Sandip Gaude	14-10-1997	Carpenter
75.	Dilip Gaude	14-10-1997	Carpenter
76.	Ganesh Jalmi	01-11-1997	Carpenter
77.	Suryakant Gawade	01-10-1997	Carpenter
78.	Robin Roy	—	Jr. Operator (Shearing M/c)

(2) If not, to what relief the workmen are entitled?"

2. Upon receipt of the reference, it was registered as IT/08/02 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exhibit 5 and Party II filed a Written statement at Exhibit 6.

3. In short, the case of the Party I is that the Party I were employed with Party II at their factory at Kundaim Industrial Estate. The factory was running in full swing and was making huge profit every year. The manufacturing activities in Goa Unit was started in the year 1996 and suddenly on 26-3-2001, the services of all the 77 workmen including 33 workers of Noida Unit who were brought to Goa were terminated on false and fabricated ground of retrenchment. The employer has flouted the mandatory provision as laid down in Section 25-F (a) and (b). The action of the management in terminating their services is illegal and bad in law.

4. In the Written statement, the Party II has stated that the Party II faced financial losses and the financial condition of the factory became from

bad to worse. The Party II even could not pay the installments regularly against the loan taken from EDC and in view of the financial position; it was neither feasible nor viable to run the production in the factory. The management could not bear further monetary losses and had no money to invest for running the factory. The management has no option but to decide not to continue the production and related activities in the factory as a result of which the workmen became surplus and therefore was constrained to effect retrenchment of the employees. All the workers have received their dues and have settled the matter and as such there exists no dispute much less an industrial dispute in the matter.

5. The Party I filed a rejoinder at Exhibit 7 denying the case put forth by Party II in the Written statement.

6. Issues framed at Exhibit 11 are as follows:

- (1) Whether the Party I/Union proves that it has the locus standi and authority to espouse the dispute of the workmen?

- (2) Whether the Party I/Union proves that the Party II terminated the services of the workmen Shri Anil Kumar Roy, Ladu Madkaikar, Anand Gaude and Robin Kumar from 26-6-01?
- (3) Whether the Party I/Union proves that termination of services of the workmen is in violation of the provisions of Sec. 25-F and 25-G of the I.D. Act, 1947?
- (4) Whether the Party I/Union proves that the termination of services of the workmen by the Party II w.e.f. 26-3-2001 is illegal and unjustified?
- (5) Whether the Party II proves that the reference made by the Government is illegal, invalid and bad in law?
- (6) Whether the workmen are entitled to any relief?
- (7) What Award?

7. In the course of evidence, the Party I examined Shri R. D. Mangueshkar as witness No. 1 and produced on record his affidavit in evidence at Exb. 21, a copy of letter to the Managing Director dated 11-4-01 at Exb. 31, a copy of industrial dispute raised with Deputy Labour Commissioner dated 27-3-01 at Exb. 32, a copy of failure report dated 4-10-01 at Exb. 33, copies of Provident Fund slips of 33 workmen at Exb. 34 colly., a copy of letter from Party II dated 20-2-2001 along with the drafts of minutes of meeting dated 15-2-01 at Exb. 35. The Party I also examined Mrs. Meera Patil and produced on record a copy of Form No. 9 obtained under R.T.I. along with enclosures at Exb. 39 colly.

8. On the other hand, Party II examined Shri Munish Kumar Aggarwal and produced on record his affidavit in evidence at Exb. 56, copies of Acknowledgement receipts No. 2601, 3201, 2602, 2603, 2604 at Exb. 57 colly., a copy of (Form P) form of notice of Retrenchment dated 26-03-2001 at Exb. 58, a copy of statement of reasons from Jaybee Lamination Ltd. at Exb. 59, copies of acknowledgement receipts Nos. 3199 & 1688 at Exb. 60 colly., a copy of application to the Asst. Labour Commissioner dated 26-3-2001 at Exb. 61, a copy of notice dated 26-3-2001 of retrenchment from Jaybee Laminations Ltd. at Exb. 62, a copy of list of retrenchment workers at Exb. 63, a copy of application dated 26-3-2001 to the Regional Director, ESIC, Margao from Party II at Exb. 64, a copy of application dated 26-3-2001 to the Director, ESIC, Local Officer, Margao, Goa at Exb. 65, a copy of application to the Director, Inspector of Factories & Boilers, Altinho, Panaji from Party II at Exb. 66, a

copy of application to the District Magistrate, North, Panaji-Goa, from Party II at Exb. 67, a copy of statement of reasons from Party II at Exb. 68, a copy of application to the SHO, Ponda from Party II dated 26-3-2001 at Exb. 69, a copy of acknowledgment receipt No. 3031 of Managing Director, Economic Dev. Corpn. of Goa along with application from Party II at Exb. 70 colly., a copy of letter of Seniority list from Party II at Exb. 71, a copy of statement from Oriental Bank, Panaji along with record slips at Exb. 72 colly., a copy of acknowledgement from Govt. of India, Ministry of Industry for Industrial Approvals Entrepreneurial Assistance Unit, New Delhi at Exb. 73, a copy of application dated 26-3-2001 to the Superintendent of Central Excise, Panaji from Party II along with acknowledgement receipt at Exb. 74 colly.

9. The witness of Party II Shri M. Aggarwal also produced on record a copy of application dated 26-3-01 to the Managing Director, Economic Dev. Corpn. of Goa along with application from Party II at Exb. 75, a copy of letter dated 27-3-01 from EDC to Party II at Exb. 76, a copy of Annual Report of financial year from 1999-2000, 2000-2001, 2001-2002 at Exb. 77 to Exb. 79, a copy of notice from Party II at Exb. 80, a copy of seniority list from Party II dated 17-3-01 at Exb. 81, a copy of retrenchment notices, order of retrenchment/termination of service of Diwan Kohli, Sunil Singh, Ram Sundar Yadav, Govind Kumar Roy, Ram Sevak Yadav, Deelip Kumar Gupta, Tejbeer Singh, Kedar Nath, Ashok Prasad, Ravin Kumar Roy, Dinesh Kumar, Birendra Yadav, Jagdish Prasad, Upendra Prasad, Naveen Paswan, Ravinder Prasad, Vinod Kumar, Sushil Kumar, Sunil Thakur, Jay Prakash Yadav, Harender Singh, Upender Yadav, Maya Ram, R. M. Tewari, Shambu Gupta, Wahad Ahmed, Ranveer Singh, Mast Ram, Anil Singh, Narendra Singh, Surya Narayan Yadav, Vijaya Rao, Mangaldas Gawade, Bharat Volvoikar, Nanda Kishor, Ramesh G., Umesh Naik, Suresh, Cholu Gawade, Martand Parab, Sunil Shirgaonkar, Jayesh Bhomkar, Srikant Holkar, Kashi Kant Jha, Srikant Salgaonkar, Pushpa Naik, Rajesh Satarkar, Uday Parab, Suresh Sawant, Sunil Naik, Santosh Gawade, Yoganand Naik, Lala Satarkar, Narayan Jalmi, Sushen Chodankar, Tinesh Kederkar, Devidas Gawade, Ravindra Sawant, Anand Shirodkar, Lalendra Phadte, Shailesh Phadte, Sudarshan Singh, Vimal Kumar Yadav, Anand Naik, Premanand Gaude, Mahesh Naik, Umesh Jalmi, Suryankant Gaude, Rajendra Shet, Uttam Kerkar, Srikant Naik, Pradip Naik, Anand Narvekar, Sandeep Gaude, Dilip Gaude, Ganesh Jalmi, Digambar Naik, Sanjay Singh, Manoj Singh, Kamlakant Gaude, Suman Naik, Gracy John and Sandip Prabhu along with acknowledgement receipts with copy of

cheques at Exb. 82 to Exb. 164, a copy of statement for period from 1-3-01 to 7-4-01 at Exb. 165, a copy of application dated 23-3-01 to the Managing Director, Economic Dev. Corpn. of Goa from Party II at Exb. 166

10. Heard arguments. Notes of Written arguments came to be placed on record by the Party II.

11. I have gone through the records of the case and have duly considered the arguments advanced. My answers with their findings and reasons thereof are as follows.

- |                      |                         |
|----------------------|-------------------------|
| 1. Issue No. 1       | ... In the Affirmative. |
| 2. Issue No. 2       | ... In the Negative.    |
| 3. Issue No. 3       | ... In the Negative.    |
| 4. Issue No. 4       | ... In the Negative.    |
| 5. Issue No. 5       | ... In the Negative.    |
| 6. Issues Nos. 6 & 7 | ... As per Final order. |

#### REASONS

##### *Issue No. 1:*

12. Admittedly, the Party I has examined Shri R. D. Mangueshkar, General Secretary of Goa Trade & Commercial Workers' Union (AITUC) who has signed and verified the statement of claim. The fact that the Party I has raised the dispute before Appropriate authority and espoused the cause on behalf of the workmen is not disputed by the Party II. The document viz. letter dated 11-4-2001 at Exb. 31 was addressed to Party II by Goa Trade & Commercial Workers' Union on behalf of the workmen. The letter dated 27-3-2001 at Exb. 32 was also issued by Goa Trade & Commercial Workers' Union. The present dispute was raised before the office of the Commissioner, Labour by the said Union which resulted in the failure report dated 4-10-2001 at Exb. 33. The Party II has also addressed to the President/Secretary of Goa Trade & Commercial Workers' Union, a letter dated 20-2-2002 along with a draft of minutes of meeting held on 15-2-2001 in the matter of gradation. The witness of Party II, Shri Munish Kumar Aggarwal has admitted in the cross examination that Wage settlement was signed by the management, representative of the workmen and the representative of the Union, which clearly shows that Union has represented the workmen during the conciliation proceedings and in the matter of gradation and therefore, Ld. Adv. Shri Suhaas Naik for Party I has submitted and rightly so that the existence of the Union is proved. The contention of the Party II that Party I has no locus standi to espouse the dispute of the workmen therefore cannot be accepted and hence, the issue No. 1 is answered in the affirmative.

##### *Issue Nos. 2:*

13. The Party II in para 4 (c) of the Written statement has claimed that the services of the workmen viz. Anil Kumar Roy, Ladu Madkaikar, Anand Gaude and Robin Roy were not terminated on 26-3-2001 while effecting retrenchment by the management as they were not in the employment of Party II at that time and as such there is no question of termination of their services as has been reflected in the order of reference. The Party I in para 8 of the rejoinder has denied that the services of the above persons were not terminated. The Party I however has not produced any document to prove the said fact nor have the above referred persons been examined. The names of the aforesaid persons do not reflect in the documents produced by Party II including copy of retrenchment notice, order of retrenchment/termination of service, acknowledgement receipt along with copy of cheques produced on record by Party II of 83 workmen employed in the said factory, whose services have been terminated after payment of legal dues towards the retrenchment. The Party I having failed to prove the above issue, the same is answered in the negative.

##### *Issue Nos. 3 & 4:*

14. Issue No. 3 and 4 are taken up for discussion as they are interrelated.

Ld. Adv. Shri Suhaas Naik for Party I has submitted that the Party II has given no good reason for termination of services of 77 workmen in the factory at Goa. The reasons given for illegal termination/retrenchment of these workers are not real, true and genuine. The management has flouted the mandatory provisions of Section 25-FFF of the Industrial Disputes Act, which lays down that when the undertaking is closed down for any reason whatsoever, every workmen who has been in continuous service for not less than one year in that undertaking, immediately before such closure, shall be entitled to a notice and compensation in accordance with the provisions of Section 25-F. He further submitted that the employer had failed to follow the procedure 'last come, first go' and also failed to give employment to the permanent employees at Noida factory. The workmen had accepted their dues under protest and therefore, the above issues deserve to be answered in affirmative.

15. Per contra Ld. Adv. Mrs. Harsha Naik for Party II has submitted that it was not possible for the Party II to manage the required finance to run the production and was not able to improve the situation which had adversely affected the



production activities resulting in monetary losses and accordingly in the interest of organization, the retrenchment was effected for valid and proper reasons as was submitted in the notice of retrenchment dated 26-6-2001 in accordance with provisions of Industrial Disputes Act. The seniority list was published on 17-3-2001 and the retrenchment notice was posted on the notice board on 26-3-2001. The retrenchment orders were sent to all the workers on last known addresses with cheques for an amount towards one month's notice pay and retrenchment compensation. All the workers have encashed the cheques sent to them towards the amount for one month notice pay, retrenchment compensation and earned wages without lodging any kind of protest and therefore, the retrenchment of the workers is absolutely legal and as per the provisions of the Act.

16. It is well settled in the case of **M/s. Hatisingh Mfg. Co. Ltd. vs. Union of India and Others, 1960 SCR (3) 528** and the Hon'ble Apex Court had observed thus:

*Normally, if the business is capable of meeting the obligation to pay the wages of the workmen and to meet the other expenses necessary for its continuance, it would not be closed down. Capacity to pay has therefore to be taken into account in the case of a running business in assessing liability to fix wages or gratuity or dearness allowance. Once the undertaking is closed and liability to pay compensation under the impugned section is not made a condition precedent, the amount which the workmen may be able to recover must depend upon the assets of the employer which may be available to meet the obligation. The workmen would be entitled to recover compensation only if the employer is able to meet the obligation; otherwise they would have to rank pro-rata with the other ordinary creditors of the employer. The legislature has imposed restricted liability in cases where closure is due to circumstances beyond the control of the employer. By the proviso to sub-section 1 of Section 25 FFF, where the undertaking is closed down on account of circumstances beyond the control of the employer, the compensation to be paid to the workmen is not to exceed his average pay for three months. If the principal provision is not unconstitutional as imposing an unreasonable restriction, it is not suggested that the proviso is on any independent ground unconstitutional.*

*However, the explanation to Section 25 FFF proviso is, it is submitted, unreasonable. The explanation provides: "An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section". The effect of the impugned section along with the proviso is to classify the undertakings into two classes, viz., (1) those which are closed down on account of unavoidable circumstances beyond the control of the employer and (2) the remaining, when the closure of an undertaking is due to circumstances beyond the control of the employer, the maximum limit of compensation is average pay for three months, irrespective of the length of service of the workmen; in the residuary class, the liability is unrestricted. The explanation is in substance a definition clause which sets out what shall not be deemed to be closures on account of circumstances beyond the control of the employer. By this explanation, employers who had to close down their industrial undertakings merely because of financial difficulties including financial losses or accumulation of undisposed of stocks are excluded from the benefit of the proviso to Section 25 FFF(1).*

*The proviso restricts the liability of employers who are compelled to close down their undertakings on account of unavoidable circumstances beyond their control, but in the view of the Parliament, in that category are not to be included employers compelled to close down their undertakings merely because of financial difficulties or accumulation of undisposed of stocks. Closure of an undertaking attributable merely to financial difficulties or accumulation of undisposed of stocks, is by the explanation, excluded from the benefit of restricted liability; but coupled with other circumstances, financial difficulties or accumulation of undisposed of stocks may justify the view that the closure is due to unavoidable circumstances beyond the control of the employer, and attract the application of the proviso notwithstanding the explanation. Where an undertaking is closed down on account of persistent losses due to no fault of the employer or due to accumulation of stocks having regard to persistent unfavourable market conditions, the closure may normally be regarded as due to unavoidable circumstances beyond the control of the employer.*

*By the explanation, the jurisdiction of the Tribunal which may be called upon to ascertain whether in a given case, the closure was on account of circumstances beyond the control of the employer and whether OD that account the employer was entitled to the benefit of the proviso may be restricted. But it is not provided that in no case of financial difficulty or accumulation of stocks coupled with other circumstances, the closure is to be regarded as due to unavoidable circumstances beyond the control of the employer....*

17. The Party I has examined Shri R. D. Mangueshkar who has reiterated the contents of the claim statement. He has stated that no notice of retrenchment was given to the workmen and that no retrenchment compensation was paid to the workmen along with notice of retrenchment of the services. He also claimed that no seniority list was displayed on the notice board and that the reasons given by the management of the Goa factory for retrenching the services of the workmen are false and misleading. In the cross examination, he admitted that the notice of retrenchment dated 26-3-2001 was displayed on the notice board. The Party II has examined Shri Munish Kumar Aggarwal who claimed that there has been continuing remarkable downfall and heavy recession in the trade and business of the factory owing to lack of orders from the customers. The raw material was costing very high. There was acute shortage of raw material used in the factory and the position never improved which has adversely affected the production activities resulting into monetary losses. The Party II therefore faced financial losses and financial condition became bad to worse and accordingly the workmen were retrenched, seniority list was published, retrenchment notice stating the reasons for retrenchment was posted and retrenchment orders were sent to all the workers along with cheques.

18. The materials on record clearly show that the establishment was closed on account of circumstances beyond the control of the employer. The management issued notices of retrenchment dated 26-3-2001 giving reasons thereof and thereafter retrenched the employees on 26-3-2001 in accordance with the provisions of the law. The retrenchment orders were also sent to all the workers with cheques for an amount towards one month's notice pay and the retrenchment compensation with copies to all the Government authorities. There is also no dispute that the workers have encashed the cheques sent to them and have received the amount without any protest

and thus have accepted the action on the part of the management and the reasons for retrenchment. In fact, they have settled the matter with the management by accepting the compensation and therefore, no dispute arises. The documents produced on record by Party II from Exb. 82 to Exb. 164 clearly show that the management have complied with the provisions of Industrial Disputes Act. The Party I was unable to prove its case and in fact admitted that the Party II was not operating their Unit for the reasons mentioned in the notice. The services of workmen were terminated by adhering to the provisions of law and therefore, the action taken by the management in retrenching the workmen was bonafide, justified and proper and same cannot be interfered in the reference. It is therefore, the above issues No. 3 and 4 are answered in negative.

Issue No. 5:

19. It is the case of the Party II that the reference made by the Government is illegal, invalid and bad in law. The witness of Party II, Shri Munish Kumar Aggarwal although stated in para 41 of the affidavit in evidence that the reference is illegal, invalid and legally incompetent in as much as provisions of Industrial Disputes Act are not attracted and that the reference was made by the Government in a mechanical manner, there are no materials on record in support of the said contention. There is nothing on record that the reference made by the Government is illegal or invalid and therefore, the above issue No. 5 is also answered in negative.

20. In the result, I pass the following:

#### ORDER

- i. It is hereby held that the action of the management of M/s Jaybee Laminations Ltd., Kundaim, in terminating the services of 77 workmen, with effect from 26-3-2001 as listed in the order of reference is legal and justified.
- ii. The Party I/Workmen are therefore not entitled to any relief.
- iii. No order as to costs.
- iv. Inform the Government accordingly.

Sd/-  
(Vincent D'Silva),  
Presiding Officer,  
Industrial Tribunal and  
Labour Court.

## Department of Law and Judiciary

Law (Establishment Division)

**Order**

No. 8/3/2017-LD(Estt)/1640

Government of Goa is pleased to constitute a following committee to carry out the work of translation of the Portuguese Civil Code, 1867 in English Language, so as to comply the directions of the Hon'ble High Court of Bombay at Goa in Public Interest Litigation (Suo Motu) No. 1 of 2017 and also to carry out the work of official translation of the parts of the Portuguese Civil Code, 1939, which still continue to be in force:-

1. Shri Fernando Elgar Noronha — Head of the Committee.
2. Shri Alexander J. P. Fernandes — Member.
3. Shri Rui Aleixo Edmundo — Member.  
Ferreira
4. State Registrar-cum-Head of — Member  
Notary Services Secretary.

The rate for translation of Portuguese Civil Code, 1867 and the Portuguese Civil Code, 1939 from Portuguese Language to English Language has been fixed as Rs. 1000/- per page.

Expenditure shall be debited to the Budget Head "2030—Stamps and Registration; 03—Registration; 001—Direction and Administration; 01—Superintendence; 28—Professional Services" under Demand No. 10.

This issues with the concurrence of Finance (Exp.) Department, vide their U.O. No. 1400035116 dated 12-09-2017.

By order and in the name of the Governor of Goa.

*Anju S. Kerkar*, Under Secretary (Estt.).

Porvorim, 20th November, 2017.

**Order**

No. 2/65/2016-LD(Estt)/1678

The Government of Goa is pleased to order the transfer of Shri V. T. Hadkonkar, District Registrar, North Goa as District Registrar, South Goa, with immediate effect and Shri Arjun Shetye, Civil Registrar-cum-sub-Registrar, Tiswadi, Panaji shall hold the additional charge of District Registrar, North Goa till further orders.

The above Officers shall complete the process of handing over/taking over of charge with immediate effect and submit compliance.

By order and in the name of the Governor of Goa.

*Anju S. Kerkar*, Under Secretary (Law-Estt.).

Porvorim, 24th November, 2017.



## Department of Public Health

**Order**

No. 4/14/2003-II/PHD/Vol. XVIII/1491

On the recommendation of Goa Public Service Commission conveyed vide their letter No. COM/II/12/30(5)/2006/925 dated 25-10-2017, the Government is pleased to declare satisfactorily completion of probation period as well as confirmation of Dr. Rohini Varadraj Pai, Assistant Professor, Department of Anaesthesiology, Goa Medical College as having satisfactorily completed her probation period of two years from 22-07-2013 to 21-07-2015, and to confirm her in the post of Assistant Professor in Anaesthesiology in Goa Medical College, Bambolim, with effect from the date of her completion of probation period.

By order and in the name of the Governor of Goa.

*Trupti B. Manerkar*, Under Secretary (Health).

Porvorim, 22nd November, 2017.

**Order**

No. 5/24/86-I/PHD/2349

Government is pleased to accept the notice of voluntary retirement dated 01-9-2017 tendered by Dr. Celina Barbosa Noronha, Health Officer under Directorate of Health Services under Rule 48 (1) (a) of CCS (Pension) Rules, 1972 and to relieve her from the post of Health Officer under Directorate of Health Services with effect from 01-12-2017 (f.n.).

By order and in the name of the Governor of Goa.

*Maria Seomara Desouza*, Under Secretary (Health-II).

Porvorim, 21st November, 2017.

**Order**

No. 35/49/2002-I/PHD/2355

Sanction of the Government is hereby accorded for enhancement of the monetary limit of diets of patients admitted in the Hospitals/Community Health Centres/Primary Health Centres/Urban Health Centres/other Health Centres under Directorate of Health Services from Rs. 50/- to 100/- for normal diet and Rs. 120/- for a high protein diet.

The revised rates shall be made applicable with immediate effect.

This issues with the concurrence of Finance (Exp.) Department vide their U.O. No. 1421127 dated 16-11-2017.

By order and in the name of the Governor of Goa.

*Maria Seomara Desouza*, Under Secretary (Health-II).

Porvorim, 22nd November, 2017.

**Order**

No. 8/55/94-II/PHD/1497

Read: 1) Government Order No. 8/55/94-II/PHD dated 28-09-2016.

2) Joining report dated 01-11-2017 from Dr. Jai Prakash Tiwari.

Consequent upon his joining back as Professor of Nephrology in Goa Medical College & Hospital Bambolim by curtailing his period of lien, Dr. Jai Prakash Tiwari is hereby appointed as Professor & Head of Department in the Department of Nephrology to be set up at Goa Medical College & Hospital, Bambolim.

Dr. Jai Prakash Tiwari has joined his duties in Goa Medical College & Hospital, Bambolim on 01-11-2017 (f.n.).

By order and in the name of the Governor of Goa.

*Trupti B. Manerkar*, Under Secretary (Health).

Porvorim, 23rd November, 2017.

**Order**

No. 44/19/2017-I/PHD/Part/2346

On the recommendation of the Goa Public Service Commission conveyed vide their letter No. COM/II/12/24(7)/2016/954 dated 08-11-2017, Government is pleased to declare satisfactory completion of probation period of two years of

Dr. Krupa Vaman Jog, Senior Pathologist under Directorate of Health Services and also to confirm her against the said post with effect from 25-06-2016 i.e. the date of her completion of probation period.

By order and in the name of the Governor of Goa.

*Maria Seomara Desouza*, Under Secretary (Health-II).

Porvorim, 23rd November, 2017.

**Department of Revenue****Notification**

No. 24/2/87-RD(Part)/2317

- Read: 1. Notification No. 24/2/87-RD dated 05-12-1997 published in the Official Gazette, Series II No. 48 dated 26-12-1998.
2. Notification No. 24/2/87-RD dated 31-03-2004 published in the Official Gazette, Series II No. 3 dated 15-04-2004.

In exercise of the powers conferred by Section 3 of the Goa Public Premises (Eviction of Unauthorized Occupants) Act, 1988 (Goa Act 22 of 1988) (hereinafter called the said Act) and in partial modification of the Government Notification No. 24/2/87-RD dated 05-12-1997, the Government of Goa hereby appoints the Additional Collector, North Goa District, Panaji as Estate Officer for the purpose of the said Act within the local limits of its jurisdiction in respect of Municipal properties controlled by the City Corporation of Panaji, in addition to his own duties.

This is issued in suppression of Notification No. 24/2/87-RD dated 31-03-2004 published in the Official Gazette, Series II No. 3 dated 15-4-2004.

By order and in the name of the Governor of Goa.

*Sudin A. Natu*, Under Secretary (Revenue-II).

Porvorim, 24th November, 2017.

**Department of Sports and Youth Affairs**

Directorate of Sports and Youth Affairs

**Order**

No. 8/10/Promotion/GPSC/DSYA/2879

On the recommendations of Goa Public Service Commission conveyed vide their letter No. COM/II/11/45(1)/07/905 dated 13-10-2017 Government is



pleased to promote Smt. Jennifer Ferrao e Gonsalves, Asstt. Physical Education Officer to the post of Asstt. Director (Physical Education North) Group 'B' Gazetted in the pay scale of Rs. 9,300-34,800+Grade Pay Rs. 4,600/- (Level 7 of the 7th Pay Commission) on regular basis with immediate effect in the Directorate of Sports & Youth Affairs. The pay of the promotee shall be fixed as per Rules.

Smt. Jennifer Ferrao e Gonsalves, Asst. Director (Physical Education North) shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

V. M. Prabhu Desai, Director & ex officio Joint Secretary (Sports & Youth Affairs).

Panaji, 23rd November, 2017.

## Department of Transport

Directorate of Transport

### Notification

No. D.Tpt/5/25/89-TPT/PF/2017/5174

In exercise of the powers conferred by sub-sections (1) and (2) of Section 68 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988), and in suppression of the Government Notification No. 5/25/89-TPT/PF/3277 dated 05-09-2012, published in the Official Gazette, Series II No. 24 dated 13-09-2012 and Notification No. 5/25/89-TPT/3054 dated 17-08-2012 published in the Official Gazette, Series II No. 22 dated 30-08-2012, the Government of Goa hereby constitutes The State Transport Authority for Goa, and the Regional Transport Authorities for Panaji, Mapusa, Bicholim, Pernem, Margao, Vasco, Quepem, Canacona, Dharbandora and Ponda as follows, namely:-

#### (I) State Transport Authority for Goa

- I. Secretary, Transport — Chairman.
- II. Shri Krishnanath Sitaram — Member.  
Divkar, Marcel, Ponda-Goa
- III. Shri Jayant Jadhav, r/o Sasmole,— Member  
Baina, Vasco-da-Gama, Goa
- IV. Shri Sukhaji Naik, r/o Mini — Member.  
Satellite Township, Colvale,  
Bardez, Goa
- V. Director of Transport — Member  
Secretary.

#### (II) (A) Regional Transport Authority for Panaji

- I. Dy. Collector & SDM, Panaji — Chairman.
- II. Shri Sanjeev Naik, r/o Gharse — Member.  
Tower, M. G. Road, Panaji, Goa
- III. Asstt. Director of Transport, — Member  
Enforcement-North Secretary.

#### (II) (B) Regional Transport Authority for Mapusa

- I. Dy. Collector & SDM, Mapusa — Chairman.
- II. Shri Sushant Ramnath — Member.  
Harmalkar, r/o Karaswada,  
Mapusa, Goa
- III. Asstt. Director of Transport, — Member  
Mapusa Secretary.

#### (II) (C) Regional Transport Authority for Bicholim

- I. Dy. Collector & SDM, Bicholim — Chairman.
- II. Shri Mangaldas Gawas, — Member.  
r/o Navelim, Bicholim-Goa
- III. Asstt. Director of Transport, — Member  
Bicholim Secretary.

#### (II) (D) Regional Transport Authority for Pernem

- I. Dy. Collector & SDM, Pernem — Chairman.
- II. Shri Pandurang Parab, — Member.  
r/o Warkhande, Pernem, Goa
- III. Asstt. Director of Transport, — Member  
Pernem Secretary.

#### (II) (E) Regional Transport Authority for Margao

- I. Dy. Collector & SDM, Margao — Chairman.
- II. Shri Chandan Nayak, — Member.  
r/o Comba, Margao, Goa
- III. Asstt. Director of Transport, — Member  
Margao (Enforcement-South) Secretary.

#### (II) (F) Regional Transport Authority for Vasco

- I. Dy. Collector & SDM, Vasco — Chairman.
- II. Shri Digamber Sakham — Member.  
Kaskar, r/o Sada-Vasco, Goa
- III. Asstt. Director of Transport, — Member  
Vasco Secretary.

#### (II) (G) Regional Transport Authority for Quepem

- I. Dy. Collector & SDM, Quepem — Chairman.
- II. Shri Sanjay Velip, — Member.  
r/o Adnem, Quepem-Goa

- III. Asstt. Director of Transport, — Member  
Quepem Secretary.

**(II) (H) Regional Transport Authority for Canacona**

- I. Dy. Collector & SDM, Canacona — Chairman.  
II. Shri Umesh Onwat Naik, — Member.  
r/o Palolem, Canacona-Goa  
III. Asstt. Director of Transport, — Member  
Canacona Secretary.

**(II) (I) Regional Transport Authority for Dharbandora**

- I. Dy. Collector & SDM, — Chairman.  
Dharbandora  
II. Shri Jitendra Naik, r/o Sancorda, — Member.  
Dharbandora-Goa  
III. Asstt. Director of Transport, — Member  
Dharbandora Secretary.

**(II)(J) Regional Transport Authority for Ponda**

- I. Dy. Collector & SDM, Ponda — Chairman.  
II. Shri Milind Dessai, Mardol, — Member.  
Ponda-Goa  
III. Asstt. Director of Transport, — Member  
Ponda Secretary.

The area of jurisdiction of the Regional Transport Authority for Panaji shall be the present area of jurisdiction of Panaji Office (Tiswadi Taluka), the area of jurisdiction of the Regional Transport Authority for Ponda shall be the present area of jurisdiction of Ponda Office (Ponda Taluka), the area

of jurisdiction of Regional Transport Authority for Mapusa shall be the present area of jurisdiction of Mapusa Office (Bardez Taluka), the area of jurisdiction of Regional Transport Authority for Bicholim shall be the present area of jurisdiction of Bicholim Office (Bicholim and Satari Taluka), the area of jurisdiction of the Regional Transport Authority for Margao shall be the present area of jurisdiction of Margao Office (Salcete Taluka), the area of jurisdiction of the Regional Transport Authority for Vasco shall be the present area of jurisdiction of Mormugao Taluka, the area of jurisdiction of the Regional Transport Authority for Quepem shall be the present area of jurisdiction of Quepem Office (Quepem and Sanguem Taluka), the area of the jurisdiction of the Regional Transport Authority for Pernem shall be the present area of jurisdiction of Pernem Office (Pernem Taluka), the area of jurisdiction of the Regional Transport Authority for Canacona shall be the present area of Jurisdiction of Canacona (Canacona Taluka) and the area of jurisdiction of the Regional Transport Authority for Dharbandora shall be the present area of jurisdiction of Dharbandora (Dharbandora Taluka).

This Notification shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

*Nikhil Desai*, Director & ex officio Additional Secretary (Transport).

Panaji, 23rd October, 2017.

[www.goaprintingpress.gov.in](http://www.goaprintingpress.gov.in)

Published and Printed by the Director, Printing & Stationery,  
Government Printing Press,  
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 38.00

PRINTED AT THE GOVERNMENT PRINTING PRESS, PANAJI-GOA-320/200-11/2017.